

HISTORY OF INJUSTICE: THE FACTORS AFFECTING RATES OF SEXUAL  
ASSAULT AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN

by

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A thesis submitted to the  
Faculty of the Graduate School of the  
University of Colorado Denver  
in partial fulfillment  
of the requirements for the degree of  
Master of Social Sciences  
Humanities and Social Sciences

2013

This thesis for the Master of Social Sciences degree by

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History of Injustice: The Factors Affecting Rates of Sexual Assault against American Indian and Alaska Native Women

Thesis directed by Professor Donna Martinez

### **ABSTRACT**

This thesis explores the various factors that contribute to the high rates of sexual assault American Indian and Alaska Native women experience. Those factors include historical violence and racism; colonialism; and other geographic, economic, jurisdictional, legislative, and social issues. This thesis also explores what has been proposed and what has been done to address the violence, and what could further be done to prevent the violence.

The form and content of this abstract are approved. I recommend its publication.

Approved: Donna Martinez

## **DEDICATION**

I dedicate this thesis to Edward Doyle. Your joy and patience continually give me strength and peace. I also dedicate this thesis to Jacob Watkins, the sweet miracle of the Watkins family.

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## CHAPTER I

### INTRODUCTION

“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly....Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds.”—Dr. Martin Luther King, Jr. (1963)

While the rates of sexual assault experienced by women of every race are disturbingly high, reports released the Bureau of Justice Statistics, Amnesty International, and other research initiatives suggest the rates of sexual assault toward American Indian and Alaska Native (AI/AN) women are among the highest. According to Lawrence Greenfield and Steven Smith from the U.S. Bureau of Justice Statistics, AI/AN women are twice as likely to be victimized by violent crimes than any other race, male or female, and they are more likely than any other group of women to be the victims of sexual assault. In fact, the average annual rate of rape and sexual assault among AI/AN communities is 3.5 times higher than for all other races (Greenfield & Smith, 1999). In total, over 34 percent of AI/AN women (more than one in three) will report being raped in their lifetime, compared with less than one in five women overall in the United States (Tjaden & Thoennes, 2000). Further, 60 percent of perpetrators who commit violence against AI/AN women are white (Greenfield & Smith, 1999).

When reading studies on the high rates of sexual violence AI/AN women experience, one obvious question comes to mind—Why? Why do AI/AN women experience such high rates of sexual violence? Not only do AI/AN women experience high rates of assault, but the perpetrators of the assault are also disproportionately white or of another race. This disproportionateness suggests there are factors of the violence distinctive to AI/AN women that are affecting the rates of sexual assault.

To understand the contributing factors that may have led to these rates, my initial intent of this thesis was to conduct a secondary data analysis (Schutt, 2004) of quantitative data provided by the National Crime Victimization Survey (NCVS). The NCVS is a survey that has collected data since 1973 and includes the largest nationally representative random sample of American households (random based on residential addresses). Administered by the U.S. Census Bureau on behalf of the Bureau of Justice Statistics in the Department of Justice, the survey is the primary source of national information “on the characteristics of criminal victimization and on the number and types of crimes not reported to law enforcement authorities” (National Archive of Criminal Justice Data, 2011, ¶ 1). The survey consists of in-person and telephone interviews of between 49,000 and 100,000 persons twice a year. The questions ask interview subjects ages 12 years and older about their victimization experiences with personal and property crimes. I chose the NCVS because it is the only survey to monitor rape and sexual assault in the United States on a biannual basis. The sample used for the survey is also large and the data collection methods sufficient to ensure the results are possibly the most reliable of any data available.

To conduct a secondary NCVS data analysis, I initially planned to analyze several variables involved in the sexual assaults of AI/AN women, including:

- rates of sexual assault AI/AN women reported to the survey
- rates of sexual assault AI/AN women reported to the police
- incomes of AI/AN women
- victims’ locations of residence (rural, urban, or rural/ urban reservation)
- perpetrators’ races/ethnicities

I planned to frame the comparison of these variables using the Inequality Crime Theory and theories on globalization. My initial conjecture was that a history of social and



economic disempowerment may have led to poverty that in turn left AI/AN women more vulnerable to sexual assault victimization.

Upon delving into the NCVS data, however, I noticed a few issues. First, “[b]ecause of size and design, nationally representative surveys such as the NCVS do not provide estimates of crime and victimization for individual American Indian tribes or Alaska Native villages” (Perry, 2004, p. 41). Because the survey lumps AI/AN tribes together, the individual identities and unique problems of AI/AN tribes are not represented within the data.

Also, and most notably, while the data may contain a large amount of national information on AI/AN women, it is not all-encompassing. When I planned to use the NCVS data to analyze the rates of sexual assault against AI/AN women, my assumption was the rates could be analyzed for AI/AN women in the same manner as any other group of women. After comparing the variables of the data, however, I noticed there was very little data on AI/AN women to study. For example, of 10 years of NCVS data (1992-2001) and 1.8 million interviews studied by Steven Perry (1992-2001), AI/AN peoples comprised just over 13,000 interviews (2004). This means AI/AN peoples comprised 0.72 percent of the survey respondents. This figure is understandable, as AI/AN people made up 0.9 percent of the total population in 2000. However, the numbers, and therefore the rates, of rape and sexual assault reported to the survey were small, or about 5 reports per 1000 people. While this rate is 2.5 times larger than the rates reported by white or black women (2 per 1000) or Asian women (1 per 1000), if there were just over 13,000 AI/AN people interviewed in the survey, then only a maximum of 65 reports of sexual assault and rape for AI/AN women could be studied from 10 years of data (Perry, 2004).

The small number of rates suggest that sexual assault and rape happen relatively infrequently for AI/AN women. However, other quantitative and qualitative reports suggest otherwise. Not only are AI/AN women at a disadvantage in studies such as the NCVS, particularly with the lack of phone and internet service on some reservations; but AI/AN women also often have a distrust with law enforcement and others seeking information about crimes within AI/AN communities, this distrust a result of history.

Even if the data from the NCVS and other surveys represented the actual rates of sexual assault and rape, the quantitative data is not sufficient to understand the problems behind the rates. Data provides numbers, not explanations of the numbers. While the rates show that AI/AN women are more than twice as likely to be victims of sexual assault, even a comparison of the data's variables does not explain the various and multi-faceted issues AI/AN face within their respective communities.

Therefore, my experiences of comparing variables of sexual assault toward AI/AN women led to a new set of research questions: What are the factors that are contributing to these disproportionately high rates? Are AI/AN women more susceptible to violence, and/or specifically targeted currently because of how they were targeted historically? AI/AN women have been victimized by explicit and violent acts of racism throughout history, particularly from colonialism. Has historical racism toward AI/AN communities continued into current treatment of AI/AN women? If the acts of violence AI/AN women experience are the result of historical and current social circumstances, what should be done to stop and prevent the violence?

After exploring why the rates of sexual assault toward AI/AN women are so high, several factors from previous research came to light that could be addressed in possible solutions to stop and prevent this violence:

- historical racism and violence as a result of colonialism
- historical trauma
- legislative barriers and jurisdictional confusion that have complicated the investigation and prosecution of AI/AN sexual assault cases
- economic barriers that resulted in poverty and a lack of access to resources
- geographic barriers that further prevent access to resources
- social barriers, largely resulting from colonialism, that have led to a vicious cycle of marginalization, internal problems for AI/AN communities, and hesitation to seek or receive justice for crime victimizations
- solutions that address only parts of a multifaceted problem

Research into such an issue is important because, as Hilary Weaver suggests, violence against any aspect of humanity affects us all (or as the Lakota phrase states, *Mitakuye Oyasin*, or “We are all related”). A prevalent trend of violence within one subset of society suggests there is a grave problem of violence within all society, and the acceptance of this violence would reflect larger psychological and social problems of society. By being aware of the circumstances behind the trends of violence against AI/AN women, societal reform can occur to reduce and eventually prevent such incidents of violence, against AI/AN women as well as other groups of men, women, and children (Weaver, 2009).

In Chapter 2 of this thesis, I will discuss previous research on sexual violence toward AI/AN women. This research includes quantitative and qualitative studies; analysis of the history of violence; how historical trauma results from and may ultimately contribute to the violence; and the current issues affecting the rates, including geographic issues, economic issues, legislative and jurisdictional issues, and social issues.

In Chapter 3, I discuss several theories that may shed more light on the issues behind the rates of sexual assault toward AI/AN women. These theories include colonialism, economic theories, and social theories.

In Chapter 4, I discuss actions that have been proposed to address the rates of sexual assault. These actions include changes to the investigation of the assaults, the treatment provided to AI/AN women following the assault, legislation that inhibits the prevention and investigation of reported assaults, and cultural reforms that could address the underlining issues contributing to the rates. I also discuss what has actually been done to address sexual assault toward AI/AN women, including legislation that was proposed and/or passed like increased funding for law enforcement, improved investigative measures, and other initiatives focused on the underlining issues of the violence.

In Chapter 5, I conclude with what could further be done to prevent and reduce the rates of sexual assault toward AI/AN women. This section includes suggestions from other researchers about what could be done legislatively, judicially, educationally, culturally, and with research to expand on initiatives against violence, as well as my thoughts on ways to address the roots of the violence.

## **CHAPTER II**

### **LITERATURE REVIEW**

#### **Definitions**

Before the rates of sexual violence against AI/AN women can be discussed, sexual assault needs to be defined. The National Online Resource Center on Violence Against Women (VAWnet) defines sexual assault as an incident that “occurs any time a person is forced, coerced, and/or manipulated into any unwanted sexual activity.” These activities include incest, various forms of rape (including partner or statutory rape), child sexual assault, sexual harassment, human trafficking, unwanted sexual contact, and voyeurism (2011, ¶ 1). This definition aligns with the definition of sexual assault from the United States Department of Justice’s Office of Violence Against Women, which also includes child molestation, incest, attempted and completed forced sexual intercourse, and unwanted fondling (Areas of Focus: Sexual Assault, 2013). For the sake of narrowing the focus, I will address forced or attempted rape of AI/AN women.

In addition to sexual assault, American Indian and Alaska Native needs to be defined. While the definitions of American Indian and Alaska Native vary within different departments and programs, this thesis will use the definition provided by the Department of Interior, which correlates with the ethnic and race categories on the United States Census and the categories used in national surveys. According to the Department of the Interior, Bureau of Indian Affairs, an Indian group “means any Indian or Alaska Native aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.” A member of an Indian group must meet the tribal criteria and consent to be listed as part of that group. In contrast, an Indian tribe

“means any Indian or Alaska Native tribe, band, pueblo, village, or community within the continental United States that the Secretary of the Interior presently acknowledges to exist as an Indian tribe.” Members must meet the membership requirement through government documentation and/or recognition as a member by the tribal governing body (2011). The 2010 Census reported that 5.2 million people in the United States identified as American Indian and Alaska Native, 2.9 million people identifying themselves as American Indian and Alaska Native alone, and 2.3 million identifying themselves as American Indian and Alaska Native in combination with other races (Norris et. al, 2012). In total, AI/AN peoples constitute approximately 1% of the total population (Walters & Simoni, 2002, ¶ 8). The U.S. Department of Interior’s Bureau of Indian Affairs currently reports there are 566 federally recognized tribes in the United States (Department of the Interior, 2012).

### **Data Studies**

“Very few people know about these figures, stats and shocking disparities...To be honest, I don't think we really knew and we're a human rights organization. I think it speaks volumes about the general lack of awareness among non-natives when it comes to the incredible rates of rape and sexual assault in native communities.” –Larry Cox, executive director of Amnesty International USA (Cited in Lee, 2007, ¶ 18)

Several surveys and studies were and continue to be conducted to analyze the severity of sexual assault rates for AI/AN women. In December 2004, Steven Perry published an analysis of the NCVS on behalf of the Department of Justice’s Bureau of Justice Statistics. Perry analyzed data from the NCVS surveys taken from 1992-2002. Based on his findings from the survey results, AI/AN peoples experienced rates of violence twice that of the U.S. population (2004). AI/AN women were more likely victims of rape/sexual assault by a stranger or acquaintance rather than an intimate

partner or family member; 60% of AI/AN victims of violence described their offenders as white; and in nearly one-third of the violent crime incidents against AI/AN peoples a weapon was used by the offender (such as firearms, knives, blunt objects, and “personal weapon”), a rate higher than the rates among all races (2004).

Perry also found that between 1992-2001, AI/AN peoples age 12 or older experienced an estimated 100,500 simple and aggravated assaults, 9,600 robberies, and 5,900 rapes or sexual assaults annually. AI/AN women were also twice as likely to experience a rape/sexual assault (5 per 1,000 persons age 12 or older) compared to all races (2 per 1,000) (2004). In fact, Perry noticed that AI/AN women experienced a rate of violent crime victimization (86 per 1,000) that was 2½ times the rate for all women. While AI/AN women reported that 25% of offenders were intimate partners or family members and 34% were acquaintances, 78% reported that their offenders were white, 9% were black, and only 14% were of another race (2004).

In addition to Perry’s report, in August 2010, Ronet Bachman et. al also published their analysis of data from the NCVS, though the data from their results came from surveys taken between 1992 and 2005. In their analysis, Bachman and her colleagues explored how the characteristics of rape and sexual assault experienced by AI/AN women compared to the experiences of African American and white women.

From their analysis of the data, Bachman and her colleagues found that AI/AN women were more likely to face armed offenders, more likely to require medical attention for injuries resulting from the attack, and while they were more likely to report their victimizations to the police, the assaults of AI/AN women were much less likely to result in an arrest (2010). Bachman and her colleagues also found that sexual assaults

against AI/AN women were more likely to be interracial, with the offenders more likely to be under the influence of drugs or alcohol, in comparison to the attacks African American and white women experienced. This study and others have reinforced the devastating impact that drugs and alcohol can have on the rates of sexual assault, particularly against AI/AN women. In fact, drugs and alcohol have been prevalent problems within the AI/AN communities and surrounding areas, possibly contributing to the rates of assault (2010). (According to Futures without Violence, 68% of AI/AN victims of sexual assault believed their attackers had drunk or took drugs prior to the attacks) (2013).

The publication of these results from NCVS came two years after Bachman and her colleagues discussed the results of the National Violence Against Women Survey (NVAWS). From 1995 through 1996, the NVAWS relied on a nationally representative sample of 8,000 women through phone surveys to obtain information about all forms of rape, including vaginal, anal, and oral penetration. According to the NVAWS, 34% of AI/AN women had experienced a completed or attempted rape in their lifetime, compared to 18% of white, 19% of African American, and 7% of Asian and Pacific Islander women. The NVAWS also found that AI/AN women were significantly more likely than white women, African-American women, or mixed-race women to report they were raped (Bachman et. al, 2008).

In February 2010, the Urban Indian Health Institute analyzed the data collected during cycle 6 (2002) of the National Survey of Family Growth (NSFG) for AI/AN women. In their report, the Institute used non-Hispanic white urban women (NH-whites) as a comparison group. Of the 7,643 females interviewed in the sample, 357 (5%) were



AI/AN and 4,039 (53%) were NH-whites. Of these, 299 AI/AN and 3,173 NH-whites were defined as urban. The results of the survey found that urban AI/AN women experienced non-voluntary first sexual intercourse at a rate more than twice that of NH-whites (17% vs. 8%).<sup>1</sup> Overall, percentages of having ever experienced forced sexual intercourse were higher among urban AI/AN than NH-whites, but were not significantly different (21% vs. 18%) (2010).

The sample size of the NSFG study relates to the sample size of a study published in the *American Journal of Public Health*. In the latter study, Teresa Evans-Campbell et. al. targeted a specific group of AI/AN women. From 2000 to 2003, Evans-Campbell and her colleagues used a survey to interview 112 adult AI/AN women and 85 men in New York City about their experiences with interpersonal violence, mental health, HIV risk behaviors, and help-seeking. Participants' ages ranged from 18 to 77 years. Education levels ranged from 6 to 17 years of formal schooling. Household incomes fell between \$30,000 and \$39,999, compared with \$43,393 as the median income for residents of New York City overall. Over half (63.6%) of participants were born in an urban area, while 36.4% were born in a rural area or on a reservation. Results of the quantitative survey found that over 65% of AI/AN women had experienced some form of interpersonal violence, of which 48% reported rape, 41.7% reported they had been touched against their will sometime in their lives, and 40% reported multiple victimization experiences. Evans-Campbell and her colleagues concluded that AI/AN women experienced high rates of interpersonal violence and trauma that further related to other health problems (2006).

While the above studies examined the quantitative rates of sexual violence experienced by AI/AN women, two years after Evans-Campbell and her colleagues

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<sup>1</sup> Unlike the NVAWS, questions of the NSFG related to only vaginal intercourse.

conducted their study, Sarah Deer, a law professor at William Mitchell College of Law in Minnesota and an expert on violent crime on reservations, and her colleagues from the Tribal Law and Policy Institute within the U.S. Department of Justice's Office of Violence Against Women (OVW) conducted a qualitative study to analyze the effectiveness of criminal jurisdiction policies for the report, prosecution, and reduction of assault incidents. Sarah Deer et. al convened a focus group of stakeholders from Public Law 280 (P.L. 280) jurisdictions to discuss how the passage of the law in 1953 has affected AI/AN communities.<sup>2</sup> Thirty-four invitees selected by OVW attended, including 29 participants and 5 observers. Based on the notes of the facilitators, the themes of concern included: "funding problems; data collection issues; lack of reporting of sexual assault; not enough use of Sexual Assault Nurses and sexual assault protocols; lack of understating at the state level of tribal culture and Public Law 280; and problems with policies within the Indian Health Service (I.H.S.)" (2007, p. 9). General recommendations to enhance the response to sexual assault included: "standardization of forms between state/county and tribe" with cultural traditions to encourage healing, "increased training for both county and tribal law enforcement," "and education for attorneys on [P.L. 280] on the state bar exam" (2007, p. 9).

One area not addressed in the above studies is the process of investigating rapes and sexual assaults once they have been reported. In May 2010, the National Council of Juvenile and Family Court Judges Training Center (NCJFCJ) held a roundtable to hear from local, state, and national experts (victim advocates, law enforcement officers, crime

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<sup>2</sup> P.L. 280 gave six states civil adjudicatory and criminal jurisdiction in AI/AN territories: Alaska, California, Minnesota (excluding the Red Lake Reservation), Nebraska, Oregon (excluding the Warm Springs Reservation), and Wisconsin. The act allowed other states to "opt in" at a later date. There was no tribal consent required for this jurisdictional change.

laboratory experts, and prosecutors). Discussed at the roundtable were the untested rape kits backlog and broader issues of investigating and prosecuting sexual assault cases. At the roundtable, Michael Sheppo, Director of the Office of Investigative and Forensic Sciences at the National Institute of Justice (NIJ) said that 18 percent of unsolved sexual assault cases with forensic evidence were not submitted to a crime laboratory for analysis. The most noteworthy part of the roundtable was the presentation by RTI International. In 2007, RTI International received funds from NIJ to conduct a survey to estimate the “number of unsolved violent crime cases (homicide and rape) and property cases that contained forensic evidence, but were not submitted to a crime laboratory for analysis” (2010, p. 48). According to the NCJFCJ report, law enforcement agencies faced substantial forensic case backlogs for homicide, rape, and property cases. The estimated unsolved cases with unanalyzed forensic evidence were 1 in 7 homicides cases, 1 in 5 rape cases, and 1 in 4 property crimes (2010).

The results of the RTI survey present an interesting factor of reporting and prosecuting sexual assaults of AI/AN women—the untested rape kits that are backlogged. With P.L. 280 confusing jurisdictions over sexual assault cases, AI/AN sexual assault cases going unreported, and backlogs in rape kits for cases actually reported, the actual number of AI/AN women victimized by sexual violence may remain high while reports and prosecutions of such victimizations remain low. These factors discourage AI/AN from reporting their victimizations to the police, which in turn discourages justice from taking place through the prosecution of reported cases.

To look further into the reports and prosecution of sexual assault cases, another study with a regional focus (California) was conducted by the Native American

Communities Justice Project (NACJP).<sup>3</sup> Throughout the first half of 2009 (late February-mid May 2009), NACJP brought together a substantial cross section of the California AI/AN community with members of the California court system to discuss family violence issues: domestic violence, sexual assault, stalking, and teen-dating violence. Seventeen community meetings were held across California with over 500 AI/AN peoples from federally and non-federally recognized tribes in attendance. Of the over 500 participants in attendance, 408 completed a questionnaire. Most respondents answered that sexual assault was the second most prevalent family violence problem, after domestic violence. Of the respondents who answered this question, 59% believed it was equally likely for perpetrators of violent family crimes to be tribal members, members of different tribes, or non-Indians. While 90.5% of respondents said women are typically the victims of these incidents of violence, young girls were believed to be the victims most often. Of the respondents who answered this question, 73% of respondents said these incidents of violence do not get reported to law enforcement. Nearly 73% also believed some incidents of violence are investigated less than others. In regards to seeking justice for these acts of violence, 44% of respondents said that state courts are used for incidents of sexual violence, while 40% of respondents said they had a tribal court (2010).

While the sample of the NACJP seemed somewhat substantial, the sample size of the NCVS data studied by Jennifer Truman and Michael Rand far outsized the NACJP sample size, as the NCVS had a national focus. In 2009, NCVS interviewed 38,728 households and 68,665 individuals twice about their experiences with victimization to crimes. The quantitative survey showed that about half (49%) of all violent crimes (rape

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<sup>3</sup> The project was established by the Judicial Council of California's Center for Families, Children & the Courts.

or sexual assault, robbery, and aggravated assault or simple assault), were reported to the police in 2009. What was most surprising about the survey results was that, unlike the results of the NACJP study (where 73% of participants believed incidents of sexual assault typically do not get reported to the police), 56.4% of female AI/AN, Asians, Native Hawaiians, and other Pacific Islanders in the study reported their victimizations of violent crimes to the police. However, and in alliance with the NACJP findings, of all the violent crimes reported by participants in the survey, rape and other forms of sexual assault were by far the least reported to the police (2010).

The findings of all the above studies indicated that even as recently as 2010, AI/AN women experienced sexual assaults at disproportionately high rates, AI/AN communities have had difficulty working with law enforcement and government entities to address these rates of violence, and that further research and analysis needs to be done to determine the actual rates of sexual violence toward AI/AN women. Many of these surveys used large samples and reliable research techniques, such as focus groups and interviews, to pinpoint and discuss the problem. However, “[i]n addition to underestimating the scale of sexual violence against Indigenous women, the limited data available does not give a comprehensive picture....[AI/AN] activists point to the importance of understanding the continuum of violence committed against Indigenous women in order to develop a strategic response to it” (Amnesty International, 2007, p. 16).

### **History of Racism and Violence toward AI/AN Women**

“Sexual assault rates and violence against Native American women did not just drop from the sky. They are a process of history.” -Jacqueline Agtuca, Alaska Native Women’s Conference, Anchorage, Alaska, 24 May 2005 (Amnesty International, 2007, p. 27)

Speaking on the rising rates of attempted suicide among AI/AN women as a result of violence, Nichole Witt, grant manager of the White Buffalo Calf Shelter in South Dakota, a shelter that houses up to 45 women and children of abuse, said there was a time when such a shelter was unnecessary. Before the European colonization of the Americas, said Witt, “[c]onsequences were quick and swift. People knew when they violated a woman, their life was at risk” (Walker, 2007, ¶ 11).

In fact, prior to colonization, many AI/AN societies were matrilineal, where the line of descent or clan membership passed through the mother (Hamby, 2000). The women selected men for leadership positions, and adopted captives from warfare (Mankiller et. al, 1998). Women were also empowered within their relationships with men. For example, within the Iroquois tribe of New York, women could divorce and decide how many children they had (Popick, 2006).

Many AI/AN societies were organized through kinship systems, where gender roles complimented each other. The roles of men and women were separate, yet balanced. Women nurtured life by farming, gathering, and producing the families’ necessities, while men took life through warfare and hunting. Resources and land were communal, and redistribution and generosity was valued among and between kin groups. Status actually came from giving and being “good kin” rather than keeping resources for oneself (Stremlau, 2005).

When Europeans arrived in North and South America, however, AI/AN societies experienced new and predominantly male influences (Mankiller et al., 1998). Devon Mihesuah argued that historical texts do not completely and accurately portray AI/AN women’s standings within their tribes, and how those standings shifted with colonialism:

In many cases Indian women did indeed have religious, political, and economic power—not more power than the men, but at least equal to what the men had. Women’s and men’s roles may have been different, but neither was less important than the other. If we look at tribal societies at contact and trace the changes to their social, economic, and political systems over time through interaction with Euro-Americans and inter-tribal relations, we find that women did have power taken from them, and Indian males did as well. (1998, p. 6)

In order to colonize a non-hierarchical society, colonizers had to first naturalize hierarchy in that society through patriarchy before naturalizing the domination of the colonized bodies (Stoler, 2002). The undermining of women’s roles was a deliberate aim of colonization (Mankiller et. al, 1998). In fact, AI/AN societies were disrupted through the programmatic destabilizing of gender roles. Many AI/AN men assumed power over AI/AN women, transforming gender relations from one of shared power to one of domination. Leadership began to revolve around treaty negotiations, of which women were excluded by Europeans (Weaver, 2009). Through the thorough integration of patriarchy into many AI/AN societies, AI/AN men were placed “below white male Indian agents and male priests but above Indian women” (Million, 2008, p. 5).

To solve the “Indian problem” of AI/AN peoples’ inability or refusal to assimilate into the new American society, legislators and leaders of the assimilation movements aimed to undermine kinship systems. Kinship systems went against “the core values” of a forming “Anglo-American culture,” which promoted “individualism,” “social order,” and “economic self-interest.” To these leaders, private property was sure to lead to personal growth, attachment to American society, and the greatest gift of all—“civilization” as defined by white standards (Stremlau, 2005).

With these motives in mind, the Dawes Act, or the General Allotment Act, was passed on February 8, 1887. The Act was essentially a land redistribution act from AI/AN

peoples to white corporations and land owners. “Under its terms, the [federal government] determined the suitability of the recipients and issued the grants, usually by a formula of 160 acres to each head of household and 80 acres to each unmarried adult” (*Encyclopedia Britannica*, 2013). Unfortunately, this system of allotment became disastrous for many AI/AN groups. The documents were not drafted in AI/AN languages, and AI/AN peoples were confused about the Euro-American ways of dealing with property and money. It therefore became easier to cheat individual AI/AN property owners than it would be to cheat entire tribes governed by councilors (Allen & Smith, 1996). Policies in support of westward expansion and Manifest Destiny were interpreted into federal policies to disenfranchise AI/AN peoples (Weaver, 2009).

Europeans did not stop with the conquering of AI/AN lands. In order to maintain control over AI/AN lands, Europeans had to maintain control of AI/AN peoples. In her historical analysis on the relationship between colonialism and sex, Ann Laura Stoler argued that the management of sexual arrangements was crucial to the establishment of colonial categories (race and class) and the distinctions between the ruled and the ruler. Racism and classism were central principles of European colonies, crucial to the class-based system that differentiated natives from Europeans and kept subversive white colonials in line. In other words, racism and class distinction were crucial to the success of colonialism. Colonialism was not merely an economic venture. It was also a cultural venture. European supremacy in regards to manhood and racial virility was both an expression and a defining feature of imperial domination (2002).

One method of inscribing European supremacy, over both men and women, was sexual assault. When the Spaniards settled on the North America continent in 1519, they



wrote to Charles V and the Catholic monarchs about the “evil” and “rebellious” natives and asked for permission to punish them for sins such as sodomy (an accusation guaranteed to politically charge colonizers) (Trexler, 1995, p. 1). To the colonial imagination, AI/AN peoples had bodies polluted with sin and marked by sexual perversity. Because AI/AN bodies were considered “dirty,” they were easily violable, or “rapable,” by the colonists and such violations did not count (Smith, 2005, p. 10). By establishing that AI/AN bodies were violable, colonists could extend this ideology to suggest AI/AN lands were violable (Smith, 2005, p. 12). The evil of the AI/AN bodies, after all, had to be conquered if the land were to be conquered.

Accounts of the natives’ sexual practices, as reported by the Spaniards, soon began appearing in print. However, these accounts were skewed for the interests of the Spaniards with “sweeping generalizations” (Trexler, 1995, p. 3). These generalizations, however, were effective in portraying the natives in a “homosexual role,” or one that is passive and submissive (Trexler, 1995, p. 3-4). What Europeans viewed as a crime against nature therefore transferred symbolically as a justification for the act of conquering, where natives became the effeminate losers in battle. The conquered, or subordinated men were equated with women, who were historically subordinated in European society. Through the conquering and punishing act of sex, women became sources of property; and men, who were deemed threats to power and property, were effeminized (Trexler, 1995, p. 7). The true men were the actives, the ones who were “sexually active over and against a lesser” (Trexler, 1995, p. 10). Rape and sexual assault were an “official policy of war,” “an instrument of forced exile” that were even “under orders” (MacKinnon, 1993, p. 89).

Not only was rape and sexual assault used as a tool of domination in conflicts and war, but they were also considered “one of the spoils” (*The Economist*, 2011). As the below table from *The Economist* demonstrates, rape and sexual assault accompany war and genocide. Only in recent years has there been a public discourse and recognition that in world conflicts, rape has and continues to be a weapon of war used to control, punish, and humiliate communities under attack (Amnesty International, 2007).

<b>Customary evil</b>	
Rape during conflicts	
<b>Conflict</b>	<b>Estimated rapes</b>
Second Sino-Japanese war, Nanking, 1937	20,000 (some 200,000 sex slaves were then provided for the Japanese army during WWII)
Soviet army in Germany, WWII	100,000 - 2m
Pakistani army during the Bangladesh war of secession, 1971	200,000
Bosnian war, 1992-95	20,000
Sierra Leone civil war, 1991-2002	Over 50,000
Rwandan genocide, 1994	500,000

Source: *The Economist*

**Figure 1: *The Economist* table of rapes reported during conflicts**

## Historical Trauma

“[The legacy of] massive injustices inevitably breeds consequences. When any minority group experiences injustice at the hands of dominant society, anger, frustration, and agony are bred. More than a century of...injustice on a massive scale has induced a chronic sense of oppression among Indians.” –Menno Boldt (Perry, 2009a, p. 10)

The long history of sexual assault has left lasting traumatic effects on AI/AN communities. Peter Levine suggested trauma is created by an event “outside the range of

usual human experience.” In the list of traumatic events, Levine includes “the sudden destruction of one’s home or community,” as well as sexual assault (1997, p. 24).

Throughout history, AI/AN women have experienced both the destruction of their communities and sexual assault, leaving them incredibly vulnerable to trauma.

In fact, theorists argue that because AI/AN women have suffered traumatic experiences throughout history, they are susceptible to experiencing historical trauma. According to Sadie Willmon-Haque and Subia Dolores BigFoot, “[h]istorical trauma involves exposure of an earlier generation to a traumatic event that continues to affect subsequent generations” (2008, p. 6). This trauma, Yellow Horse Brave Heart said, is a “cumulative emotional and psychological wounding, over the lifespan and across generations, emanating from massive group trauma experiences” (Cited in Denham, 2008, p. 7). Historical trauma is a recently emerging field of study that “has become increasingly important in considerations of wellness among historically oppressed communities” (Evans-Campbell, 2008, p. 6). Research on historical trauma has been conducted with a variety of populations, including Jewish Holocaust survivors and their descendents, Japanese Americans after placement in internment camps, (Evans-Campbell, 2008) descendents of slavery, and communities ravaged by war (Denham, 2008). The effects of historical trauma on the AI/AN family (clans, bands, societies) include colonization by a dominant force that was patriarchal and patrilineal” (Willmon-Haque & BigFoot, 2008, p. 6). When survivors are not allowed to mourn trauma to completion, subsequent generations can absorb the resulting depression (Cox, 2008). From the 1490s to current times, the European genocidal campaigns and socioeconomic and political policies against the AI/AN populations have left continuous, indelible marks

on the AI/AN community that has prevented the community from mourning and wholly healing from the trauma.

Genocidal campaigns are not the only devastation Europeans inflicted upon AI/AN communities. Prior to Europeans invading the Americas, “in Europe 99 percent of the population lived in dire poverty where malnutrition and disease ran rampant. They suffered from extreme oppression of all kinds...living a life of scarcity and abuse” (Olsen, 2010, ¶ 6). As the Europeans came over to the Americas, the AI/AN populations were introduced to these dire conditions. Disease wiped out nearly 90 percent of the AI/AN population, and a 500-year period of colonization imposed sexism, racism, oppression, poverty, and violence upon the communities (Olsen, 2010). Many of the remaining tribes were forced to relocate to land thought to be uninhabitable, and educational policies of assimilation and acculturation, aimed to “Kill the Indian, save the man” were enacted. While “these policies professed altruistic motives, they had in common the eradication of Native cultures and their replacement with the economy, religion, and values of the North American settlers” (Walls & Whitbeck, 2012, p. 3). On many reservations, schools were nonexistent, so parents were forced to send their children to boarding schools “sometimes for a decade or more” (Yurth, 2006, ¶ 30). The boarding schools were run either by Christian missionaries or the Bureau of Indian Affairs and often enforced the indoctrination of Western values, “offering less education to girls than boys and making girls clean the schools” (Hamby, 2000, p. 10). Names were changed, and the use of native languages and the practice of spiritual teachings and ceremonies were forbidden (Walls & Whitbeck, 2012).

These events have amounted to a cultural and ethnic genocide among AI/AN communities (Evans-Campbell, 2008). While AI/AN communities have shown tremendous resilience in the face of history, that history, compounded with current traumatic events, have taken a toll on the health of the community, mentally, physically, and socially. During the 500-year period of colonial occupation, AI/AN communities have had no time to heal from the trauma (Olsen, 2010). As a result, the pain and turmoil over the events has become internalized. AI/AN peoples, particularly elders, have “reported a range of emotional responses, including sadness, depression, anger, anxiety, discomfort around White people, fear of White people, shame, loss of concentration, feelings of isolation, rage, feeling that more traumas will happen, and avoidance of places or people that are reminders of the losses” (Evans-Campbell, 2008, p. 10). This trauma is then carried through the generations. Children either experience the trauma directly through the stories they hear from their elders, or they experience it indirectly through their social and economic standings within internal and external society (Evans-Campbell, 2008).

The cycle of trauma and abuse have left AI/AN women with distrust and hostility as a result of, and further exacerbating, the marginalization and disempowerment they experience within broader society. The effect of marginality, or the “social isolation within the broader culture,” on violence directed against AI/AN women, cannot be emphasized enough (Koci & Strickland, 2009, p. 2). Marginalization not only minimizes a person’s sense of power in decision-making, but the isolation also limits the person physically and psychologically. The isolation and marginalization creates a sense of powerlessness, affecting one’s sense of identity, relationships, and environments (Koci &

Strickland, 2009). Women in general are at risk for marginality, people of low socioeconomic statuses are at risk, and people of racial/ethnic minority status are at risk of marginalization and accompanying feelings of powerlessness. Having all of these traits, AI/AN women are especially at risk of marginalization, and therefore more vulnerable to violence and trauma (Koci & Strickland, 2009). AI/AN women are then prone to experience effects that most women suffer following sexual assault victimization, such as post-traumatic stress disorder (PTSD), depression, abuse of drugs and alcohol, and contemplation of suicide ([www.rainn.org](http://www.rainn.org), 2013).

Paula Gunn Allen, for example, described her experiences with historical trauma. Reflecting on a world where AI/AN people and their cultures slowly disappear through historical violence and forceful disempowerment, and are replaced with artifacts and records of AI/AN heritages, Gunn Allen struggled with the message she thought society had painted—“[t]he only good Indian is a dead Indian.”

I didn't know the name of the disease I was suffering from. I was seeing a shrink. I didn't know that I was only grieving and lost. I thought I was mentally ill. (Gunn Allen, p. 37)

The stress of survival for an entire cultural group, combined with the crises that have severely damaged the ability of that group to survive, can take a significant toll on the culture of the group, as it has with AI/AN communities (Cox, 2008).

The experiences of AI/AN women (and men), compounded with a history of disempowerment and marginalization, has created a deep “intergenerational grief and trauma” that only time and various measures of reparation from federal, state, and local authorities can address (Perry, 2009a, p. 10). Until factors such as racism and poverty that marginalize AI/AN peoples are eradicated, trauma from historical injustice will continue

to exist and even grow from generation to generation. Teen suicide rates will remain high among young AI/AN people (the rates are 5 times higher than the national average for AI/AN teen men, and 3 times the national average for AI/AN teen women), and they will continue to be raised within a dire social context where they believe they have more reasons to die than they do to live (Popick, 2006).

### **Current Crime Rates and Issues Affecting the Rates**

“Dysfunctional systems are often maintained through systematic denial, a failure or inability to see the reality of a situation. This denial need not be conscious, intentional, or malicious; it only needs to be pervasive to be effective.” –Karen Warren (1993)

The dysfunctional systems left by colonialism and resulting in a long history of violence and trauma have created conditions where AI/AN women continue to experience high rates of violence. While much of the violence against AI/AN women rests in history, the remnants of this history and its violence still affect the rates of sexual assault. The current rates and lack of recourse for sexual assaults against AI/AN women was highlighted during a 2007 congressional hearing.

In October 2007, the U.S. Senate Indian Affairs committee held a hearing to discuss the rates of sexual assault toward AI/AN women on reservations. During the hearing, Alexandra Arriaga, director of government relations for Amnesty International USA, told the congressional committee that not only will one in three AI/AN women be raped in their lifetimes, but 86 percent of the perpetrators would be non-Indian men (Cited in Associated Press, 2007). Even though these crimes often happened in Indian Country, tribal courts did not have jurisdiction to prosecute non-Indians, so if federal and state courts decided not to prosecute, the victims of these crimes had no recourse. Senator Byron Dorgan also mentioned that in his state of North Dakota, there were four police

officers patrolling 2.3 million acres of a Sioux reservation (Associated Press, 2007). This hearing addressed some of the many and multifaceted problems related to sexual assault toward AI/AN women and why the rates reported through testimonies and various research findings are so high. Jurisdictional confusions, particularly if the victims and perpetrators are of different races; the lack of resources for patrolling areas and responding to reports; the lack of prosecution for crimes that do get reported; and other economic, social, and geographic issues have all compounded to make of the problem of sexual assault toward AI/AN women as severe as it is.

### Geographic Issues

Because tribes were forced off of desirable lands, many reservations have become located in remote areas where public transportation is usually not available. These remote areas also have fewer available programs because attracting funds and qualified staff to remote areas to run the programs has proven difficult (Hamby, 2004). In Alaska, for example, there is little and even no law enforcement in several villages because of the villages' distance from road systems, leaving the villages accessible by only boat, air, or snowmobile (Lee, 2007). Also, confusion about whether state, federal, or tribal police should respond to a report based on the place of the incident and the races of the perpetrator and victim means the victims may not see a police officer or nurse for hours or days, should a response happen at all (Talhelm, 2007). Just as it is difficult for law enforcement to reach these areas, should they attempt to respond, it is also difficult for victims to leave these areas to seek refuge in safe houses and treatment centers (Lee, 2007).



Victims may also be hesitant to seek services in small, rural areas because of familiarity with service providers. In small communities, victims may know the care providers or law enforcement, potentially leading to a lack of anonymity and confidentiality. Care providers and law enforcement may also know or be related to the perpetrators, potentially leading to inaction or a conflict of interest in addressing reports. The victim may also reencounter the perpetrator frequently if the perpetrator lives within the community. All these scenarios are frequent and real occurrences that have affected the propensity of AI/AN women to report their sexual assault victimizations in small areas (Rape Victim Advocacy Program, 2013).

Rural areas certainly experience unique problems for reporting and addressing sexual assault, these problems rendering rural areas prime targets for assault. However, urban areas are no safer. After all, the sexual assault rates for AI/AN women overall is high, and 60% of AI/AN women lived in urban settings as of 2002 (Walters & Simoni, 2002). Isolation is therefore not the only geographic barrier AI/AN women face. In fact, “[i]n Anchorage, Alaska’s largest city, Alaska Natives were 9.7 times more likely to be raped or sexually molested than the rest of the population” (Lee, 2007, ¶ 5). Denise Morris, head of the Alaska Native Women’s Sexual Assault Committee, said that many AI/AN women in urban areas are homeless or live in high-crime areas and are reluctant to seek help from the police (Lee, 2007). Even if AI/AN women do find the courage to seek out police, and “[e]ven if a rape victim is taken to an Indian Health Service clinic, almost half of those clinics lack training and resources to provide emergency services to victims of sexual violence” (Talhelm, 2007, ¶ 3).

### Jurisdictional/Legislative Issues

This reluctance to seek help from police may be the result of not only strained relations between AI/AN communities and law enforcement, but also jurisdictional confusion. Several laws enacted over the course of 150 years have created a checkerboard pattern on reservations that has resulted in a confusion of jurisdictions, frustration among law enforcement, and a resulting lack of justice. The General Allotment Act was probably one of the most significant in creating this confusion. While the Act was supposed to allocate parcels of land to Indians on an individual basis, much of that land was sold to non-Indian people and corporations, yet that land still remained within reservation boundaries. This Act, compounded with other laws over the years, has created a web of jurisdictions that continues to be nearly impossible to navigate. In addition to this web, as well as the over- and under-policing of AI/AN communities, have exacerbated a distrust of law enforcement and created “safe havens for violent crime because of federal neglect, inconsistency and broken promises” (Eid, 2007, ¶ 23).

#### **Jurisdictional confusion.**

Reauthorized in 2005 with the goal of enhancing the safety of women, the Violence Against Women Act (VAWA) included a specific title, Title IX Safety for Indian Women, to acknowledge the responsibility of federal, state, tribal, and local governments to assist AI/AN tribes in protecting AI/AN women. Title IX, Section 902 stated that the government should work to decrease violent crimes against AI/AN women, strengthen the sovereignty of AI/AN tribes so that they are able to respond to violent crimes against AI/AN women, and ensure the perpetrators of violent crimes against AI/AN women are held accountable for their crimes. The reauthorized act also called for a mandated

analysis of the federal, state, tribal, and local systems responsible for protecting AI/AN women, this analysis under the guidance of AI/AN tribes, AI/AN advocates, policy experts, and a task force to guide the research project's implementation. The aim of this analysis was to offset the "well documented" underreporting of crimes against AI/AN women (Baseline Study Task Force on Violence Against American Indian and Alaska Native Women, 2010).

Title IX was the result of tribal and non-tribal efforts to address the complexities of federal Indian law and its impact on AI/AN women. The prior VAWA had assumed that the justice system model was comprehensive with a coordinated community response, a model that did not account for the jurisdictional confusion and lack of resources often associated with crimes against AI/AN women. While violence against women was decreasing nationally following the initial VAWA, rates of victimization among AI/AN communities had remained the same or even increased. Institutionalized legal barriers, as well as the lack of criminal jurisdiction over non-Indians, continue to leave AI/AN women at risk of sexual assault victimization, without the criminal recourse that all other women within the United States had (Baseline Study Task Force on Violence Against American Indian and Alaska Native Women, 2010). Unfortunately, non-Indian perpetrators are often aware of issues regarding jurisdictions in Indian Country and the vulnerability of AI/AN women (United States Civil Rights Commission, 2003).

Indian Country, as defined by federal law § 1151, is "all land within the limits of any Indian reservation under the jurisdiction of the United States Government," "all dependent Indian communities within the borders of the United States whether within the originally or subsequently acquired territory thereof," and "all Indian allotments, the

Indian titles to which have not been extinguished” (Cornell University Law School, 2011, ¶ 2-4). As sovereign nations, Indian tribes have jurisdictional power over incidents occurring within Indian Country. However, this jurisdiction has been limited over the years. Under the General Crimes and Major Crimes Acts, Congress granted jurisdictional power to federal courts over interracial crimes within Indian Country; as well as the 16 major crimes committed by Indians within Indian territory, the crimes defined within the “federal enclave laws.” These crimes include arson, theft, sexual assault, maiming, manslaughter, and murder (Offices of the United States Attorneys, 678 and 679, 2012). As a result of the 1978 case, *Oliphant v. Suquamish Indian Tribe*, tribal courts do not have criminal jurisdiction over non-AI/AN peoples, not unless Congress delegates this power to the tribal courts (FindLaw.com, *Oliphant v. Suquamish Indian Tribe*). While the 1978 case, *United States v. Wheeler*, ruled that trying a defendant within tribal and federal court is not a violation of the defendant’s right against double jeopardy (FindLaw.com, *United States v. Wheeler*), the Indian Civil Rights Act of 1968 stated that tribal courts could not “impose for conviction of any one offense any penalty or punishment greater than imprisonments for a term of one year or a fine of \$5,000 or both,” although these penalties were later increased to up to three years in prison or a \$15,000 fine or both (Cornell University Law School, 2012, ¶ 7A-B). This maximum sentence of three years, for any crime, is short compared to the average prison sentence handed down for rape from state and federal courts, which ranges between 8 years and 8 months to 12 years and 10 months (Amnesty International, 2007).

States do not typically have jurisdiction over crimes in Indian Country, except for three conditions: the punishing of wholly non-Indian crimes in Indian Country, as the

Supreme Court ruled in *United States v. McBratney* and *Draper v. United States* (FindLaw.com, *United States v. McBratney*; Findlaw.com, *Draper v. United States*, 2012); the concurrent criminal jurisdiction on states and reservations impacted by P.L. 280; and federal mandates given to states to exercise jurisdiction outside of P.L. 280, such as land claims settlement acts or restoration acts. In short, tribal courts address minor crimes by tribal members on reservations, federal agencies prosecute major crimes by AI/AN peoples on reservations, and state agencies handle cases with non-AI/AN peoples.

Before P.L. 280 was enacted, tribal courts and the federal government shared jurisdiction over nearly all civil and criminal matters involving AI/AN peoples on reservations. After the enactment of P.L. 280 in 1953, affected states received criminal jurisdiction involving Indian victims and perpetrators, including law enforcement and civil judicial authority.<sup>4</sup> For the “mandatory” six states, P.L. 280 went into effect without consent from the affected tribes. Some federal laws following P.L. 280, such as the Indian Gaming Regulatory Act of 1988 and the Indian Child Welfare Act (an act that gives tribes sole jurisdiction over child custody cases), reduced the amount of states’ jurisdiction to increase tribal sovereignty and federal power (Goldberg, 2011). While Indian tribes were able to retain some civil and criminal jurisdiction over activities in Indian Country, P.L. 280 continues to remain controversial, as the law came around the time the country “was enacting ‘termination policies’ to assimilate tribes into the broader society and do away with reservations and tribes themselves” (Gamboa, 2012 ¶ 16). The

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<sup>4</sup> The “mandatory” states were Alaska; California, Minnesota excluding Red Lake, Nebraska, Oregon excluding Warm Springs, and Wisconsin. The “optional” states were Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington.

law also remains controversial to the states, as they resent having to provide law enforcement without funding (Perry, 2009a).

A complete summary of the jurisdictions as a result of statutes and court decisions are in the Appendix tables. The tables, with their many exceptions for particular cases, indicate why law enforcement agencies may be confused and even hesitant to respond to crimes on reservations. Law enforcement officials would need to be well versed in the laws and know the circumstances of the offender, victim, and area of the crime (the borders of reservations often confused) before knowing how to proceed with the investigation. For example, if a deputy sheriff responds to a call about violence, and the house is within Navajo territory, the sheriff has to wait until tribal police respond. The same situation occurs when tribal police respond and the crime happened outside of tribal jurisdiction (*Navajo Times*, 2007). This confusion often leads to AI/AN victims of sexual assault telling their stories “multiple times to authorities in multiple systems that may or may not be working in collaboration” (Talhelm, 2007, ¶ 14).

Also, “[a]ll too often, tribal police responding to domestic violence cases must confront non-Indian perpetrators who argue that only the federal government, and not the tribes, can assert criminal jurisdiction over them” (Eid, 2007, ¶ 18). In a congressional briefing in May 2012, an AI/AN woman and a victim of violence, Diane Millich, described how vulnerable AI/AN women are within the justice system, particularly if offenders are non-AI/AN men or the crimes happen on reservations. While Millich’s ex-husband abused her more than 100 times, he was never arrested, at least not until he showed up to her work with a 9 mm pistol and wounded “the co-worker who pushed her

out of the way” (Gamboa, 2012, ¶ 1). Why? Millich is an AI/AN woman, her ex-husband is not, and the crimes of abuse took place on a Southern Ute reservation.

A Census reported that 77 percent of people living in Indian Country are non-Indian, and the Justice Department reported that about half of AI/AN women are married to non-AI/AN men. However, because the 1978 case, *Oliphant v. Suquamish Indian Tribe*, determined that tribal authorities cannot prosecute non-AI/AN men even if crimes are committed on tribal lands, and because jurisdictional confusion has muddled cases on and off reservations when the perpetrator and victims are of different race, authorities often refuse to act. AI/AN women are therefore left without the same protections as non-AI/AN women. Even if tribes have good relationships with local officials, the isolation and vast covering areas of reservations, in addition to the lack of resources, means that “misdemeanor” crimes take a backseat, allowing these crimes to steadily grow into a situation where AI/AN women are severely wounded or even killed (Gamboa, 2012). To Andrea Smith, these policies by the U.S. have “codified the ‘rapability’ of Native women” (2005, p. 33).

### **Strained relationships between the justice system and AI/AN communities.**

In addition to jurisdictional confusion, one of the major problems that prevents AI/AN women from seeking or receiving the help they need for sexual assault is the fear they have in law enforcement and the community/criminal justice system, whether this fear is based on the knowledge of others’ experiences or firsthand experiences. While U.S. minority groups face common problems within the criminal justice system, the complex relationships between state, tribal, and federal laws and officials creates unique issues for AI/AN women (Hamby, 2004). First, there is a lack of crime data for Indian

Country due to the geographic, economic, and cultural issues unique to reservations. Even when it is possible to obtain accurate data, the prevalence and types of crimes vary between reservations (Wakeling et. al., 2001).

Second, while the overall workload for law enforcement in Indian Country is increasing significantly, there is a dramatic gap between the current number of police officers and the number of officers needed. In 2006, a Bureau of Indian Affairs internal consultant determined that more than 2,200 additional police officers would be needed on AI/AN reservations. Unfortunately, there were only 450 employees within the Bureau's Office of Justice Services, "including police, correctional officers, prosecutors, and staff" (Eid, 2007, ¶ 16). Further, these employees reported poor employee morale and thus high turnover that lead to inexperienced officers, inadequate budgets, and unnecessary political interference that not only prevented the police from performing their duties in a fair manner, but also reduced the police's credibility in the communities' eyes (Wakeling et. al., 2001). The departments also were prevented from communicating with the service population, leading to a lack of knowledge about the communities' needs. These factors render it hard for police to generate community support for their activities (Wakeling et. al., 2001).

Third, the lack of community support is due not only to lack of communication from law enforcement offices. Federal policy has also historically created systems that serve the U.S. government and non-AI/AN citizens more than the AI/AN communities they are supposed to serve. While 25 percent of all violent crimes prosecuted by U.S. attorneys occur on reservations, the courts ruled that AI/AN communities cannot legally enforce Congress' "trust" obligation to protect them. "In other words, there is no trust



account, no minimum funding requirement, to ensure that public-safety and criminal-justice needs on Indian reservations are met. The tribes simply get whatever Congress chooses to appropriate in any given year for law enforcement and other essential governmental services” (Eid, 2007, ¶ 7). This funding issue has proven precarious from the investigation to the prosecution of AI/AN sexual assaults. Indian Health Service hospitals have reported shortages of sexual assault kits, trained nurses to perform rape examinations, and even cameras to document injuries. In fact, of the 45 hospitals financed by the Indian Health service, only 27 performed rape examinations, and only 73 sexual assault examiners were trained. The facilities also did not adequately track the number of victims treated, and they even lacked policies for treating rape victims (Williams, 2012).

This inadequate funding affects the protection provided by state law enforcement as well. While tribes affected by P.L. 280 must work with state law enforcement, “since the federal government does not compensate state governments for law enforcement on reservations, and tribes generally do not pay local or federal taxes, states have little vested interest in providing ‘protection’ for Indian tribes” (Smith, 2005, p. 33). AI/AN communities have found that not only are Congressional funding requests rejected by the government. Federal prosecutors have also notoriously declined cases that occurred on AI/AN reservations.

The Major Crimes Act mandated that certain “major crimes” in Indian Country be processed and tried through the federal justice system (Smith, 2005). One of the “major crimes” was rape. However, Department of Justice representatives reported that U.S. attorneys declined to prosecute about 75% of any crime cases that took place in Indian

Country, and they were even more reluctant to process rape cases. In 1997, the Department of Justice reported that only two U.S. attorneys prosecuted rape cases in Indian Country (Smith, 2005). Further, in a 2008 hearing before the Senate Committee on Indian Affairs, the Justice Department actually declined to release statistics to Congress on how many crimes on reservations the federal government declined to prosecute. Senator Byron Dorgan, chairman of the Committee, “criticized the Justice Department for withholding the information, because previous congressional testimony has shown that American Indian crimes are a low priority in some U.S. attorney's offices” (Cardona, 2008, ¶ 13). Police Chief Jim Bennally argued that this jurisdiction causes a slow investigation timeline, when it may take two to four years for an arrest to happen on a case. Because of a lack of prosecutors (or because of a number of case declinations) and because of lengthy investigation timelines, of the 328 rapes reported on reservations in 2007, only 17 led to an arrest (Amnesty International, 2007).

Not only are the crimes low priority and lengthy processes within federal offices common, but AI/AN communities also have trouble even accessing federal courts. In the congressional hearing, Janelle Doughty, director of the Department of Justice and Regulatory for the Ute tribe in Colorado, stated “the nearest federal judge is 350 miles from the Southern Ute reservation and even farther from the Ute Mountain Ute tribe” (Cardona, 2008, ¶ 14). To Doughty, “[c]ase declinations, inadequate resources for criminal investigations, the lack of federal judicial access...these are all symptoms of a justice system that was designed more than a century ago by the federal government to keep Indian people down instead of permitting [them] to take responsibility for [their] own destiny” (Cardona, 2008, ¶ 15). As a result, tribal members believe police are

insensitive and unresponsive and they opt not to contact the police for help (Wakeling et. al., 2001). In fact, AI/AN victims report less than 25 percent of their victimizations from violent crimes to law enforcement (Eid, 2007).

The lack of AI/AN communities' respect for law enforcement, jurisdictional confusion, the lack of federal funds for justice programs, and refused help of local and federal authorities are problematic in themselves for AI/AN women. However, the over-policing for the sake of monitoring potential AI/AN perpetrators of crime has, according to Barbara Perry, served to reinforce the "colonial effort to regulate and marginalize indigenous people" (2009a, p. 2). Through her interviews with many AI/AN peoples, Perry argued the general sentiment among the AI/AN population was that while authorities are hesitant to help AI/AN victims of crime, the "police appear to need little provocation to intervene *against*" AI/AN peoples (2009a, p. 6). [Because the front lines of controlling the "threat" of AI/AN people throughout history has been the military and law enforcement (this "controlling" including genocide, assimilation practices, the removal of the AI/AN populations to reservations, and the incarceration of AI/AN perpetrators), AI/AN communities are often hesitant to reach out to authorities.] In fact, many of them are leery of the presence of authorities altogether, as they suspect that presence means trouble. This distrust includes tribal law enforcement, as some women have reported that tribal law enforcement discouraged them from reporting their victimizations (Williams, 2012). Perry's interviews

yielded five distinct consequences deriving from what was perceived as discriminatory policing: exacerbation of the problem of over-representation in crime statistics; reinforcing the hostility and distrust of law enforcement; reinforcing the marginali[z]ation and disempowerment of Native Americans; segregation of Native Americans within reservation communities; and enabling the violent victimi[z]ation of Native Americans. (2009a, p. 4).

While AI/AN peoples are twice as likely as the general population to be victimized by crime, particularly interracial crimes, they are also arrested for alcohol-related offences at nearly twice the rate of the general population, testifying to the results of colonialism that have left AI/AN communities “impoverished and deculturated” (2009a, p. 5). In fact, AI/AN peoples

make up approximately 1% of the population; yet they consistently account for about 15% of offenders entering federal prisons. Between 1977 and 2002, they represented 13.3% of executed prisoners, and in 2002, 45% of those on death row. In all, over 4% of the Native American population is under correctional supervision on any given day - contrasted with 2% of the white population. (2009a, p. 15)

This over-policing, a distrust of law enforcement, and the racial tone of the violence is further reinforced by incidents of purposefully failed protection. In some reported instances, when AI/AN women called the police about their sexual assault and violence victimizations, the officers berated the victims for bothering the police, in essence questioning the credibility of the women, dismissing their claims, and essentially permitting anti-AI/AN violence to happen undeterred as “the norm” (2009a, p. 16).

Even when AI/AN women do report their victimization and officers respond, evidence is often mishandled, leaving many crimes unprosecuted (Lee, 2007). When Jami Rozell, Cherokee, was raped by an acquaintance, she did not immediately press charges because the responding officer told her she would have seven years to report it. When she decided to proceed with the case only a few months later, she discovered the police had “already destroyed the photos and the nurse's report from her forensic physical exam in what they called a routine department clean-up” (Lee, 2007, ¶ 12). Her attorney also

advised her from proceeding because “the state court system would just rape her again” (Associated Press, 2007, ¶ 10).

The mixture of under-policing for lack of resources (or antipathy) and over-policing to survey potential AI/AN perpetrators has combined to reinforce distrust and hostility toward police and even the western criminal justice system. This distrust has inhibited many AI/AN peoples from contacting law enforcement for help. An AI/AN woman who survived sexual violence said that “[m]ost women who are beaten or raped don’t report it to the police. They just shower and go to the clinic [for treatment]” (Amnesty International, 2007, p. 14).

While AI/AN women have become leery of reporting their victimizations, the factors that led to injustice have also led to potential future victimizations. The low rates of arrests and prosecutions have left high numbers of sex offenders within Indian Country. For example, the Rosebud Sioux Reservation in South Dakota has a population of 25,000 people, which includes 99 Class 3 sex offenders. The Tohono O’odham reservation in Arizona has a population of 15,000 that includes 184 Class 3 sex offenders. In comparison, Boston has a population of 618,000 that includes 252 Class 3 offenders, and Minneapolis has a population of 383,000 that includes 101 Class 3 offenders (Williams, 2012).

When AI/AN women stop going to the police for help because of the lack of recourse, their right to protection is forfeited through circumstances, exposing them to further victimization, disempowering them and marginalizing their voices and their value within American society. The issues they have encountered with law enforcement has sent a message to AI/AN communities about their value, made them fearful of leaving

their communities and therefore limited their movement within society, and has ultimately created a “territorial defen[se] of cultural ‘space’” (Perry, 2009a, p. 14). To many AI/AN communities, the legacy of injustice leaves little hope that a system representative of that injustice could abandon current practices and go against history to address the crimes and injustice that perpetually leaves those communities so vulnerable to crime and injustice.

### Economic Issues

Geographic and jurisdictional issues are factors that have played significant roles in the rates of sexual assault against AI/AN women on reservations. However, according to the 2010 Census, 78% of people who identified themselves as AI/AN (alone or in combination with other races) lived outside of AI/AN areas, whereas only 20 percent lived within AI/AN areas, AI/AN areas being a federal or state reservation, or a federal/state-designated “statistical area” (Norris et. al, 2012). Other economic and social factors must therefore play a role in the rates.

Economic issues, along with the geographic and jurisdictional issues that have affected the rates of sexual assault, can be traced to colonization. Prior to colonization, many AI/AN societies were hunting and gathering societies. Their “wealth” came from the land and depended on the community working together. Within the last hundred years, however, a transition from farming and hunting to a “cash-based economy” threw many tribes into a cycle of poverty “from which most have not emerged” (Hamby, 2000, p. 15). Forced removal from their lands, prohibitions on their religious practices, “frequent removal of Indian children into foster homes and boarding schools, and a drastic reduction in the native population from the time of Western contact until the

creation of the reservations” all caused a shift in the socioeconomic organization of AI/AN tribes and groups. This shift determined access to economic and social resources and left many communities vulnerable to internal and external acts of violence (Hamby, 2000, p. 15).

Exacerbating the economic circumstances for AI/AN women are the high rates of unemployment and poverty within AI/AN communities. In 2006, a family of four was considered to live in poverty if their annual income was below \$20,614. Based on this standard, 25.3% of AI/AN peoples were in poverty by 2005 Census Bureau data, compared to 13.3% for all demographics (Greco & Dawgert, 2007). There may be a direct link between this poverty and sexual violence, as a lack of economic power and access to resources has left many AI/AN women dependent and has forced them to stay in dire situations.

This lack of access to resources includes homes without internet or even telephones to call for assistance (Hamby, 2004). In fact, less than 10 percent of homes on tribal lands have access to broadband internet service (Federal Communications Commission, 2013), and less than 70 percent have basic telephone service, compared to 98 percent of homes nationally (Smith, 2012). AI/AN peoples have long been disconnected from the rest of the country, as reservations are often on remote land with little economic potential and away from modern markets, health care, and higher education. The rise of the internet, however, has served to reinforce the isolation in most AI/AN communities. Education, jobs, and even health care records have increasingly shifted to the online world, and if AI/AN communities lack internet service and even electricity to run computers, then they are at a severe disadvantage to access resources

(Smith, 2012). Lack of access to health care information, information on programs and legal help available, and other resources have not only severely disadvantaged AI/AN women from seeking help, but AI/AN communities have also lost opportunities for economic growth. The communities have been left behind as the rest of the country moves forward technologically, further exacerbating generational poverty within AI/AN communities (Smith, 2012).

Economic limitations not only exacerbate the rate of sexual violence, but sexual violence also exacerbates the economic predicaments of AI/AN women. In fact, sexual assault victimization has proven to be an expensive experience for the victims. A John Hopkins University School of Public Health study found that 50 to 95% of women suffer from PTSD following a rape, and PTSD can severely affect a person's ability to focus at work. Another study found that 50% of sexual assault victims lost their jobs or were forced to quit after being raped because of affected work performance or time required off to address the emotional and physical problems from the assault, or from legal proceedings (Greco & Dawgert, 2007). In many cases, if a victim refuses to report the sexual assault, then she must pay for her medical care (Minnesota Center Against Violence and Abuse, 1998). The out-of-pocket expenses resulting from sexual assault have also burdened AI/AN women. Medical bills, mental health treatment, property damage, and lost or diminished work have resulted in an average \$5,100 of tangible losses for sexual assault victims (Greco & Dawgert, 2007). While assistance is available, many victims may not know it exists, the assistance is reimbursements for costs and victims cannot provide the money up front, or the assistance does not cover all the incurred costs.



Further, AI/AN programs in urban areas also suffer from severe underfunding, as eligibility limits for many assistance programs sometimes require those assisted to be at or below 200 percent of poverty lines (Wilkins, 1993; Greco & Dawgert, 2007). Programs benefitting tribes also suffer the deepest cuts in federal spending, though AI/AN peoples are “the very people to whom [the] government owes its first responsibility, based on treaties, statutes, and federal court rulings” (Wilkins, 1993, p. 2). These programs include assistance to AI/AN women victimized by sexual assault. This lack of program funding, compounded with poverty and other economic limitations, exacerbates the general vulnerability of AI/AN women to victimization, as the women lack access for help and the communities lack resources to protect their members. If left unaddressed, the economic, geographic, and jurisdictional and legislative barriers tribal communities face could lead to “a final and systematic and perhaps even ruthlessly efficient destruction' of their societies” (Wilkins, 1993, p. 2).

### Social Issues

Social issues have also compounded with economic, geographic, and jurisdictional and legislative issues to create and exacerbate the conditions under which AI/AN women are sexually assaulted. In fact, AI/AN women face social adversity not only by their victimizations, but also in how their victimizations are addressed. Most non-native researchers and providers of assistance come from a place of position and power. “They spend only brief periods, sometimes hours, on reservations, interact only as professionals, and leave” (Hamby, 2000, p. 19). Health care providers, law enforcement personnel, and even rape crisis advocates commonly make recommendations on preventing and treating sexual assault victimization based on predominant U.S. culture.

These recommendations include encouraging AI/AN women to disclose the details of their victimizations for potential help from agencies, encouraging rape victims to be physically examined and treated to prevent STDs and pregnancy, encouraging AI/AN women assaulted by their partners to divorce or leave their partners, and encouraging AI/AN women to prosecute their perpetrators (Hamby, 2004).

These recommendations often conflict with the values AI/AN women hold (Hamby, 2004). For instance, AI/AN women may find it difficult to discuss the details of their victimization out of concern for their communities. Many AI/AN women fear being ostracized by their families and community, as privacy regarding sexuality and family problems is very important to many AI/AN communities. By making a report, the victim “goes public” with what happened to her. Newspapers, and possibly even radio and television may report the assault, and the offender is also questioned. This amount of attention may bring embarrassment to the victim, especially if the details of what happened to her are released (Minnesota Center Against Violence and Abuse, 1998). AI/AN women would therefore be unlikely to report their victimizations at the risk of alienation and embarrassment, particularly in light of the poor handling of reports, the rare prosecution of such crimes, and the lack of jurisdictional protections for AI/AN women (National Task Force to End Sexual and Domestic Violence Against Women, 2005). Some AI/AN women may also be hesitant to use the U.S. criminal justice system because they view the system as potentially racist (Hamby, 2004). This fear of reporting only increases the vulnerability of AI/AN women to be sexually victimized, whether once or repeatedly (Women of Color Network, 2006). To Larry Cox, executive director of

Amnesty International, all these factors amount to “a travesty of justice for the tens of thousands of indigenous survivors of rape” (Cited in Talhelm, 2007, ¶ 4).

These acts of violence and lack of recourse for such acts are not only physically violating, but they also violate nearly every other aspect of the lives of AI/AN women. According to the United Nations’ Convention on the Elimination of All Forms of Discrimination Against Women, violence against women is discrimination that inhibits the ability of women to have the same rights and freedoms as men. This violence includes mental, physical, or sexual harm; threats of such actions; coercion; and other acts that deprive liberty. These acts of violence deprive women of “[t]he right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;” “[t]he right to liberty and security of person; [t]he right to equal protection under the law; [t]he right to equality in the family;” and “[t]he right to the highest standard attainable of physical and mental health” (1992, Recommendation section 7b-g). Sexual violence in general is also a form of discrimination against women, and the victimization of AI/AN women is a form of discrimination against the indigenous identity. These acts of discrimination, when left not rectified, are a violation of women’s rights to equality within the legal system and beyond (Amnesty International, 2007).

One of the first times the severity of this violation was highlighted was the proceedings of the International Criminal Tribunal for Rwanda (ICTR). ICTR was established to investigate the human rights violations that occurred in Rwanda in 1994. The prosecution of high-ranking officials for their involvement in the genocide led to a definition of genocide that included sexual assault. ICTR concluded that genocide is the act of committing physical or mental crimes to destroy a religious, racial, or national

group. Sexual assault was described as a tool of physical invasion committed against a person under coercive circumstances (United Nations, 2008).

The mental and physical effects of physical and cultural genocide have affected not only the victims of Rwanda, but also AI/AN women. The continuous threat of violence and harassment AI/AN women face daily has become a mechanism to create boundaries physically and socially. Violence reinforces withdrawal and isolation, or segregation. The notion of “what’s out there” is a reminder to AI/AN women that they are not welcome in certain situations and ultimately kept them in their position (Perry, 2009b).

The threat of violence not only isolates and segregates AI/AN women, but the threat of violence also keeps AI/AN women, and women in general, in subordinate roles with lower levels of political participation, education, and work opportunities. This subordination of women and their lack of economic independence force many to stay in relationships of violence and coercion, further preventing women from participating equally in public and family life. Women in war-stricken territories are at even greater risk of sexual assault and exploitation, and women in rural areas face risks of gender-based violence due to traditionally subordinate attitudes toward women (United Nations, 1992). Winona LaDuke further argued that, while the Charter of the United Nations states that “all peoples have the right to self-determination” and by virtue of that right “they may freely determine their political status and freely pursue their economic, social and political development,” in reality women often find they are the prey in a predatory society “whether through sexual discrimination, exploitation, sterilization, absence of

control over [their] bodies, or being the subjects of repressive laws and legislation in which [they] have no voice” (Winona LaDuke, 1995, p. 470).

The colonization and exploitation of AI/AN women led to stereotypes that devalued AI/AN women and denied them personhood, a devaluation which is still prevalent in today’s culture (i.e. the use of the term “squaw”). This devaluation not only denies AI/AN women of personhood, but it also perpetuates violence against AI/AN women. According to the National Congress of American Indians, in 2008, 90% of sexual assaults and 75% of intimate victimizations against AI/AN women were committed by someone from a different race (National Congress of American Indians, 2008). The rates of sexual assault AI/AN women experience, and the racial/ethnic composition of the perpetrators of such crimes, suggests that the social context of AI/AN women is not neutral, and as long as the devaluation of AI/AN women continues to occur, so too will the violence they experience (Weaver, 2009).

### **CHAPTER III**

#### **ROLE OF THEORY**

“An ideology is made of what it does not mention; it exists because there are things which must not be spoken of.”—Pierre Machery (Cited in Million, 2008, p. 2)

#### **Colonialism**

For his analysis of the effect of colonialism on AI/AN peoples, David Wilkins referred to colonialism as “the establishment of domination over a geographically-external political unit most often inhabited by people of a different race and culture, where this domination is political and economic, and the colony exists subordinated to and dependent upon the mother country” (1993, p. 9). The colonizers typically exploit the land and people of the colonized nation through extraction or abuse. Charles Pinderhughes further defined colonialism, specifically internal colonialism, “as a geographically-based pattern of subordination of a differentiated population, located within the dominant power or country” (2011, p. 3). Internal colonialism’s subordination, to Pinderhughes, is the group inequality resulting from and expressed by the “policies and practices of a variety of societal institutions, including systems of education, public safety (police, courts, and prisons), health, employment, cultural production, and finance” (2011, p. 3). In fact, the very foundation of colonialism is that a group has been conquered; their social, economic, and cultural structures have been uprooted, or at least disrupted; and outside force is imposed to the degree that “resistance is futile” (Wilkins, 1993, p. 11).

AI/AN tribes continue to be the subjects of internal colonialism within the United States. Not only has colonialism led to the economic and cultural erosion of AI/AN communities, but colonialism also continues to effect the very existence of AI/AN

communities. While Supreme Court decisions have established AI/AN tribes as sovereigns from the United States, federal acts could eradicate that sovereignty. Because tribes are not protected under the Constitution, these sovereigns, while federally recognized, could have their rights revoked should the government so choose (Wilkins, 1993). To Felix Cohen, the process of colonialism was established and maintained because “federal officials believed that it was 'the white man's burden of telling the Indian what to do', since the Indians were 'inefficient, dishonest, wasteful, ignorant, selfish, impatient, and generally drunk . . .’” (Wilkins, 1993, p.11).

Robert K. Thomas further argued that the United States was the “first major country in the world to try to integrate a deviant minority...by turning over its affairs to a governmental bureau and charging that agency with the task of integration and acculturation,” creating “the most complete colonial system in the world” (Wilkins, 1993, p. 12). Palmer Patterson argued that unlike Third World countries that were (and are) the victims of colonization, AI/AN peoples cannot hope that the colonizing power will eventually leave. AI/AN peoples are “culturally and numerically strangers in their own country” (Wilkins, 1993, p. 12).

To Teresa Evans-Campbell, this marginalization, lack of hope, and disempowerment have compounded to create a Colonial Trauma Response (CTR). CTR is a combination of historical and contemporary trauma responses to community and personal events. “A defining feature of CTR is its connection to colonization. Indeed, CTR reactions may arise as an individual experiences a contemporary discriminatory event or microaggression that serves to connect him or her with a collective and often historical sense of injustice and trauma” (2008, p. 18). Evans-Campbell used the example

of an AI/AN woman being called a derogatory name and feeling rage over her current experience and how it connects to the historical treatment and injustices of AI/AN women: “Although the assault targeted her individually, it led her to contemplate her ancestors’ experiences and thus connected her to collective ancestral pain in a very immediate and emotional way” (2008, p. 19).

Sexual assault on AI/AN women could certainly elicit this type of response. Sexual assault is a painful experience for any woman to go through, but for AI/AN women, sexual assault also reflects a history of domination, genocide, and ethnocide that all resulted from the colonization of AI/AN tribes. The government’s (and society’s) complete control over AI/AN society, historically and currently, have left a legacy of despair and poverty that not even the illusion of sovereignty can repair.

### **Economic Theories**

In addition to colonialism, poverty and other economic issues affect the rates of sexual assault AI/AN women experience, and several theories delve into the implications of economic factors on the rates of sexual assault within AI/AN communities. One theory is the Inequality Crime Theory, or the theory that higher rates of social and economic inequality lead to higher rates of crime. This theory has been analyzed for other demographics such as African American men, and the theory is often used to describe why the victims of inequality become the perpetrators of crime. However, this theory has also been used to understand how the victims of inequality also become of the victims of crime. Through their research, Lawrence Cohen et. al. delved into the Inequality Crime Theory from the angle of criminal victimization.



In 1981, Cohen and his colleagues conducted a study that tested a formal theory of how certain dimensions of social stratification, such as income, race, and age, correlate with the risk of criminal victimization. Their study consisted of a representative sample of the U.S. population and addressed burglary, larceny, and assault. From their data, Cohen and his colleagues concluded that while the relationship between offenses and dimensions of social stratification are complex, with all other variables being equal, the people usually thought to be the most economically and socially disadvantaged, such as those who are poor or non-white, are actually not the most likely victims of assault or the other crimes studied (1981). While this study's results provided a counterargument to the overall Inequality Crime Theory, the theory of Cohen and his colleagues was not applied to the situation of AI/AN women, so a similar study with AI/AN women may yield different results. AI/AN women are in a unique situation. Their histories differ (i.e. the effects of colonization are still being felt because the colonization is still happening), their current circumstances differ (geographic issues, jurisdictional and legislative issues, etc.), and the lack of data available for analysis differs from any other "disadvantaged" group.

The Inequality Crime Theory describes how present social and economic factors may affect the rates of criminal victimization; however, for the case of AI/AN women and the high rates of sexual assault they experience, another theory is needed to explain the circumstances that led to the economic and social disadvantage of AI/AN women, and how these circumstances further left AI/AN women vulnerable to violence. Rauna Kuokkanen argued that the very system of globalization consists of interlocking systems of oppression such as colonization, patriarchy, and capitalism. These systems are

particularly debilitating to indigenous women around the world, as indigenous women are among the hardest hit by the results of economic globalization, such as the expansion of markets, trade liberalization, and the cheapening of labor. Furthermore, for globalization to exist, a certain aspect of colonization needs to take place. As historical texts have shown, the economic conquest of a society is often accompanied by the physical conquest of that society's members. This physical conquest includes the sexual assault of the society's members by the "conquerors" in order to subdue and exploit the society's members physically in the same manner that their resources and economy were subdued and exploited economically. To Kuokkanen, globalization represents a multifaceted violence against indigenous women (2008).

Kuokkanen supported her argument with the argument of Veronika Bennholdt-Thomsen and Maria Mies. Mies and Bennholdt-Thomsen argued that the current globalization process subordinates women under patriarchy not only through violence, but also through the commodification of everything to maximize profits. This commodification of society is ultimately harmful to life and human beings, and particularly to women (1999). This harm may have translated into the devaluation of AI/AN women that perpetuated the high rates of sexual assault they experience.

Sener Uludag and his colleagues further argued that inequality among and within nations and its relation to criminal victimization may be explained with the Marxist theory of capitalism's exploitative practices as it spreads around the world. According to the Marxist theory, owners of capital seek to increase their surplus value from the workers in order to increase profits. As capitalism spreads around the world, so does the class struggle and eventual inequality. Many nations lose their political and economic

autonomy within the capitalist system, leading to interdependent nations and the stronger (core) nations deriving their wealth from the exploitation of weaker (periphery) nations. This exploitation of periphery nations leads to increased poverty and unemployment in those nations, further leading to social and psychological strain that contribute to higher levels of crime victimization for those living in periphery nations. This social and psychological strain is further exacerbated by capitalism's disruption of traditional production relations. This disruption causes the migration of people from rural to inner cities in search of employment and resources, the competition for resources and employment causing tensions within communities, and these tensions adding to the poverty, inequality, and poor living conditions people in a transformed nation experience as a result of capitalism. As these tensions and strains increase, so do the rates of criminal victimization. A few studies have, in fact, found that periphery nations, or nations that have greater levels of inequality, have higher levels of crime victimizations among their citizens than core countries do (2009).

This theory relates to the predicament of AI/AN peoples. AI/AN communities, as the periphery nations, experience a relationship with the core nations, or the U.S. governments, that leaves the communities vulnerable to violence. This relationship is largely due to a history of resources being taken from AI/AN peoples, and also includes other levels of constraints that inhibit sovereignty and justice, such as jurisdictional and legislative constraints. AI/AN peoples find themselves with dual citizenships as members of their communities, but also residents within the United States. They find themselves constrained by the U.S. governments, yet also dependent on them because of the poverty and lack of power that has inflicted AI/AN communities.

Vandana Shiva further discussed what continues to link capitalism to colonialism, and colonialism to the exploitation and degradation of indigenous peoples. According to Shiva, “development” was supposed to be a post-colonial project where the entire world could potentially remake itself like the modern West without having to experience the subjugation and exploitation that embodied colonialism. However, early industrial development in Western Europe highlighted how “colonialism is a constant necessary condition for capitalist growth: without colonies, capital accumulation would grind to a halt” (1989, p. 398). Development, as a form of resource and therefore capital accumulation, included not just the creation of wealth, but also the creation of dispossession and poverty. Development therefore became a process of colonization, or a project of wealth creation in the vision of the modern West through the exploitation, degradation, and erosion of nature, indigenous labor, and indigenous cultures (1989). This exploitation, as other theorists and researchers argue, translates from the conquest and exploitation of indigenous labor and resources to the physical exploitation of indigenous women’s bodies.

### **Social Theories**

Economic theories need to be compounded with social theories to more fully examine how the socioeconomic status of AI/AN women was established. Unfortunately, some theories hoping to encompass “all” women offer aerial arguments of the circumstances that created the social positions of “all” women. For instance, in her book on the issue of rape, Susan Brownmiller argued that rape and sexual assault are tools of power and intimidation for men to keep all women in fear (1975). Not only were (and are) rape and sexual assault tools of fear, but they are also tools of subjugation for the

“protectors” of women. To defend and protect themselves against potential predators, women struck social bargains with men to become domesticated, and ultimately the chattel of men. In essence, if the chastity and monogamy of a woman were violated, then the crime would be viewed as a crime against the man’s property (1975).

Unfortunately, Brownmiller’s theories were not directly applicable to the predicament of AI/AN women. In fact, Brownmiller’s theories reflected a white feminist angle on sexual assault (e.g., the domestication of white women and their chastity and monogamy certainly does not reflect the historical positions of black women, AI/AN women, etc.). While her perspective on issues affecting women was limited when applied to the positions of AI/AN women, Brownmiller did have one universal point—sexual assault against women has historically been a tool of power in both instigating fear and reinforcing social standings.

To set the stage in discussing the adversities women of color face, Kimberlé Crenshaw described the situation many experience that leaves them vulnerable to criminal victimization. Crenshaw argued that poverty, childcare responsibilities, and lack of resources and job skills have burdened many women of color. These burdens, which resulted from a history of gender and class oppression, compounds to high unemployment and underemployment that renders women of color less able to depend on friends and neighbors for temporary assistance, as those friends and neighbors often experience the same situations of un(der)employment (1997). Many women of color are therefore unable to leave households with domestic violence or areas with high rates of sexual assault or other crimes. Further, these adversities also feed into a system where women of color find their voices ignored in the justice system and broader social

discussions. Crenshaw argued that when issues such as sexism and racism, which readily intersect in reality, are not allowed to intersect in feminist theory, and when identities are relegated to either “women” or “people of color,” then the identities of minority women are relegated to an untold place (1997). Crenshaw pointed to the violence that happens toward minority women as an example. Because minority women are situated between at least two oppressed groups, often with conflicting political agendas, the women may find themselves in an “intersectional disempowerment.” For instance, groups fighting for minority rights may suppress the intracommunity problems of violence towards their women because of the public perception that might result from the disclosure of such problems (1997).

This suppression of intracommunity problems, according to Wilma Mankiller, happens in AI/AN communities: “Nascent concerns about discrimination against Indian women often are overshadowed by the need of all tribal members to band together against political and legal attacks” (1998, p. 198). Other activists and researchers have discussed sexual assault against AI/AN women only indirectly as an indigenous family violence issue. This limited scope has kept hidden the prevalence of sexual assault against AI/AN women (Cox, 2008). Conversely, feminist movements may also suppress the violence that happens towards minority women to prevent the perception that such violence is a “minority problem,” though some feminist scholars have used AI/AN women as examples of where sexism originated (Popick, 2006). While these analyses are being proved incorrect (since many AI/AN societies had egalitarian structures concerned less with equality and more about the dignity of the community members and the right of members to make decisions), these analyses, and conversely the lack of analyses on

violence toward AI/AN women, have highlighted the role and depiction of AI/AN women in feminist discussions on violence (Popick, 2006).

AI/AN women have found their conditions are buried within “the colonial apparatus involving colonizers and colonized,” and they are placed in a conflict between the “need to organize on intimate issues and the necessity to argue for self-determination for their communities” (Million, 2008, p. 4). Even self-determination movements led by AI/AN men ignore the predicament of AI/AN women, as many of these movements exclude the AI/AN view of the “‘private sphere’ or the ‘domestic’ conditions that were a daily part of women and children's survival” (Million, 2008, p. 4). The limited focus on issues affecting AI/AN women also impacts how indigenous communities view violence. In fact, “[t]he lack of education about sexual assault, and the compounding effects of coloni[z]ation, contribute to the normali[z]ation and acceptance of violence in some contemporary Indigenous communities” (Cox, 2008, p. 2).

Andrea Smith delved further into the psychological and social implications of violence and the lack of action to seek justice, on AI/AN women and larger society. Smith suggested that sexual violence is not limited to the act of rape. It encompasses strategies designed to not only destroy peoples, but also to “destroy their sense of being a people” (2005, p. 3). When an AI/AN woman experiences abuse, she experiences it as an attack on her identity as a woman and as an AI/AN woman. To Smith, the untold stories of AI/AN women and other victims with untold stories allows sexual violence to become a tool of patriarchy, racism, and colonialism that labels people as “rapable,” sometimes labeling entire communities of color as potential victims. The labeled groups are then subjected to violence through direct sexual assault as well as state and federal policies

(2005). The “labeled groups” are sometimes even subjected to violence from their own men as a result of patriarchy. [As bell hooks argued, minority men, “who are utterly disenfranchised in most every arena of life in the United States, often find that the assertion of sexist domination is their only expressive access to that ‘patriarchal power’ they are told all men should possess as their gendered birthright” (hooks, 1993, p. 353). Because the domination and control of sexism requires violence to maintain that control, rape and sexual harassment are the direct result of patriarchy. Therefore, “[w]e cannot hope to transform ‘rape culture’ without committing ourselves fully to resisting and eradicating patriarchy” (hooks, 1993, p. 353).]

Sherry Hamby, examining the feminist standpoint theory, suggested that subordinate groups, such as AI/AN women, are in a prime position to address the problems suffered under patriarchy. AI/AN women are essentially “bicultural warriors” who possess information about social relations that dominant groups do not, as AI/AN women must learn the cultural and social customs of both the dominant group (Western culture) and their own groups. These “warriors” also intentionally seek out achievements instead of letting the achievements happen as a result of belonging to a particular group (2000, p. 19). The feminist standpoint theory ultimately suggests that AI/AN women can be valuable resources and the instigators of change to better their societies. The question is, what needs to be done to make that change happen?



## CHAPTER IV

### DISCUSSION

“Knowledge is the foundation of human progress as well as the basis for our expectation that we...can help people achieve a brighter future.” -Russell Schutt (2004)

#### **What Has Been Proposed to Address the Problem**

Because sexual assault against AI/AN women is a multifaceted issue, approaches to address the violence need to be holistic. These approaches overall should challenge “discrimination on the grounds of gender and Indigenous identity in society at large and in the institutions charged with upholding and delivering justice” (Amnesty International, 2007, p. 92). Amnesty International, other advocacy organizations, and researchers have proposed several approaches to improve the investigation of sexual assault reports; the treatment of AI/AN women, physically, mentally, and emotionally after the assaults occur; the prosecution of reports; the legislation aimed at preventing future assaults and creating safe environments for reservations; and the education of AI/AN issues and history so that the underlying ideologies that have contributed to the assaults are exposed and addressed.

#### Investigation

First, a clear issue for reservations is the response of law enforcement to sexual assault reports. Jurisdictional confusion has muddled which law enforcement office is responsible for responding to a report, depending on the perpetrator’s race and where the assault took place. Legislation will need to be updated or overturned to clear this confusion, but what Amnesty International argued can be immediately done is to *permanently* increase federal funding (i.e., not subject to cuts) to recruit, train, equip, and retain sufficient law enforcement officers to provide adequate law enforcement coverage.

Training should reinforce that all police officers, in policy and practice, have the authority to take action in response to reports of sexual violence, including rape, within their jurisdiction. The officers can then effectively apprehend the alleged perpetrators in order to transfer them to the appropriate authorities for investigation and prosecution. All law enforcement agencies should also co-operate with, and expect cooperation from, neighboring law enforcement bodies on the basis of mutual respect and genuine collaboration. This cooperation will ensure protection of survivors and those at risk of sexual violence, and that perpetrators are brought to justice (Amnesty International, 2007). While a permanent increase in federal funds may not be plausible, as almost anything in federal budgets are subject to cuts, a general increase in funds for enhancing and training law enforcement could be certainly possible.

Amnesty International also recommended that, in addition to better coordinating responses to reports of sexual assault, law enforcement authorities establish processes of reporting where victims, relatives, and witnesses can make reports without fear of reprisal (Amnesty International, 2007). With too long a history of ineffective policing creating distrust among AI/AN communities, victims and witnesses should finally be able to make reports with confidence that they will be taken seriously and that authorities will act properly and impartially. Also, with a history of reports and evidence being improperly mishandled and AI/AN women not having access to health care facilities, law enforcement agencies and health service providers should ensure that all AI/AN women survivors of sexual violence have access to adequate and timely sexual assault forensic examinations without charge to the survivor and at a facility within a reasonable distance.

This access to health care facilities is the start to providing the proper treatment to AI/AN victims of sexual assault (Amnesty International, 2007).

### Treatment

To enhance access to the proper treatment, Amnesty International and Sarah Deer have suggested a few initiatives. First, Amnesty International suggests that the federal government increase funding for the Indian Health Services and other health care programs for AI/AN women. This increased funding would improve and further develop facilities and services, increase permanent staffing in both urban and rural areas in order to ensure AI/AN women receive adequate medical attention, and create more sexual assault nurse examiner (SANE) programs (2007). Second, Amnesty International suggests that state and federal governments ensure adequate funding for support services, including shelters and rape crisis centers. In exchange, these shelters and rape crisis centers should provide culturally appropriate, sensitive and non-discriminatory support to AI/AN women (2007). Finally, Sarah Deer suggested that AI/AN peoples be given the resources to provide safety and health services themselves (Cited in Talhelm, 2007). Adequate treatment services and thorough investigations are important aspects to ensuring justice and care for AI/AN victims of violence. However, changes to the prosecution of AI/AN sexual assault cases also need to be made in order for justice to truly become reality for the victims.

### Legislation

In order to amend the prosecution system and increase funding for programs necessary to treat AI/AN victims of sexual assault, legislation needs to be revised. After all, limits to tribal authority, lack of funding for AI/AN programs, and the lack of

prosecution of cases due to jurisdictional confusion all relate to limits imposed by legislation. One of the bills that many groups argue should be amended is the Indian Civil Rights Act.

The Indian Civil Rights Act limited the punishments tribal courts could impose on AI/AN peoples, the punishments being a maximum of one year of imprisonment or a \$5,000 fine (Cornell University Law School, 2012). Further, tribal courts can order these sentences for only AI/AN peoples. They have no jurisdiction over non-AI/AN peoples, even if the crimes were committed in Indian Country. To empower tribal courts to better protect AI/AN peoples, Amnesty International argued that Congress should amend the Indian Civil Rights Act to recognize that tribal authorities have jurisdiction over ALL offenders who commit crimes on tribal land and the authority to impose sentences commensurate with the crime and consistent with international human rights standards (Amnesty International, 2007). Amnesty International also argued that the federal government should ratify the following international human rights treaties<sup>5</sup>:

- the Convention on the Elimination of All Forms of Discrimination against Women
- the International Covenant on Economic, Social and Cultural Rights
- the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- the ILO Convention No.169, concerning Indigenous and Tribal Peoples in Independent Countries (Amnesty International, 2007)

Perhaps one of the most unanimous current calls for legislation to protect AI/AN women is continued funding for the Violence Against Women Act (VAWA), particularly

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<sup>5</sup> The United States' hesitation to ratify human rights treaties, has long been controversial. A treaty is essentially a contract between nations, and the nations must abide by that contract. The United States has expressed hesitation to undertake a treaty obligation it cannot carry out or conflicts with existing U.S. law or the Constitution, among other reasons. With treaties, however, conditions can be attached to the treaties ratification so long as the other parties of the treaties accept the conditions. The attachment of the United States' conditions to treaties, specially the number of conditions, has also been controversial and other nations view these conditions as undermining the purpose of the treaties (Venetis, 2011).

the section that aims at protecting AI/AN women (Lee, 2007). The law gave law enforcement and social service organizations funding to train prosecutors and law enforcement, and to educate about violence and sexual assault against women with the goal of prevention. Unfortunately, and for the first time since 1994, VAWA was allowed to expire in January 2013. Over two months elapsed before the Senate's extended version passed, but the bill was finally signed into law on March 8, 2013. There were several initial objections to the passage of the Senate version, notably against new protections for AI/AN women. The Senate version empowered tribal courts to hear cases involving non-AI/AN offenders within AI/AN communities. This expansion of tribal court jurisdictions raised questions on tribal court authority and whether this authority would soon become limitless (Lyden, 2013). The new law is expected also to raise questions about expanded sovereignty that may end in several court cases (Cohen, 2013).

### Cultural Reform

Understanding and fully addressing the issue of violence against AI/AN women does not rest solely on the amendment of legislation, increased funding for AI/AN health care, or in increased training of law enforcement. In fact, Andrea Smith argued that anti-violence measures cannot depend solely on state and federal funding or the criminal justice system. To Smith, there is a contradiction in relying on the state to solve problems the state is responsible for creating. Further, this dependence on government funding and the justice system increases the “professionalization” of anti-violence initiatives and alienates the power of the movements from the community (2005, p. 171-172). These movements therefore need to include community organization and community-based responses to violence. These movements and responses should “[p]romote holistic

political education at the everyday level within [AI/AN] communities, specifically how sexual violence helps reproduce the colonial, racist, capitalist, heterosexist, and patriarchal society we live in as well as how state violence produces interpersonal violence within communities” (2005, p. 174). This holistic education would, in turn, focus less on the criminalization of offenders “and more on the U.S. ensuring economic, social, and cultural rights that decrease women’s vulnerability to violence” (2005, p. 168).

This holistic approach would also involve a community response to help heal the victims. One approach suggested is programs that promote restorative justice.

“Restorative justice” is an umbrella term that describes a wide range of programs which attempt to address crime from a restorative and reconciliatory rather than a punitive framework. As opposed to the U.S. criminal justice system, which focuses solely on punishing the perpetrator and removing him (or her) from society through incarceration, restorative justice attempts to involve all parties (perpetrators, victims, and community members) in determining the appropriate response to a crime in an effort to restore the community to wholeness. (Smith, 2005, p. 139-140)

Restorative justice would heavily involve tribal authorities in the investigations, prosecutions, and sentencing.

Other suggestions for a cultural and community approach draw from the spirituality and traditions of many AI/AN communities. Resources such as native healers, talking circles, and other spiritual, cultural, and tribal justice resources have the potential to provide coordinated community responses that are relevant and relatable to AI/AN communities. These resources could incorporate cultural interests into current government services and programs, and therefore provide individualized care based on the needs and cultures of particular communities. For example, language and communication styles could be adapted based on the respective audience, and agencies

could have community members and survivors as part of the staff to make the programs relatable and more comfortable to victims. Community based responses could also provide more choices for accessible services. Transportation, meals, and child care could be addressed to make these services acceptable and therefore effective, and provide AI/AN women a choice of services that are within or outside of their communities. Finally, the community could initiate efforts to secure continuous and adequate funding from federal, state, and tribal sources. AI/AN gaming revenues, or grants from the STOP Violence Against Indian Women Discretionary Grants Program are examples from which community groups could request funds (Hamby, 2004).

### **What Has Been Done to Address the Problem**

#### Legislation

Several legislative and funding initiatives have already been taken to address certain aspects of the multifaceted problem, predominantly on the federal side. Federal funds for AI/AN tribes are sometimes earmarked. For instance, members of federally recognized tribes can receive services at Indian Health Service facilities (IHS) or tribal facilities that receive IHS funding, such as treatment for STDs and injuries (and AI/AN women can receive free psychotherapy if they locate an IHS therapist with sexual victimization trauma expertise) (Hamby, 2004).

The United States Department of Justice is also taking steps to prevent violence against AI/AN women. The U.S. Department of Justice has granted millions of dollars to tribes such as the Choctaw Nation and Tonkawa Tribe to fight violence against women and help victims pay for education costs (Associated Press, 2009). In addition to these funds, in March 2008, Title IX of VAWA, Section 904 (a)(1)(2), authorized the

Department of Justice's National Institute of Justice (NIJ) to develop the Section 904 Tribal Task Force. The Task Force is currently developing several research projects to examine various forms of violence against AI/AN women living in tribal communities, "evaluate the effectiveness of federal, state, tribal, and local responses to violence against American Indian and Alaska Native women," and "propose recommendations to improve effectiveness of these responses" (U.S. Department of Justice, Section 904 Task Force, 2013, ¶ 3). One of the steps already taken to improve effectiveness includes \$118 million the Coordinate Tribal Assistance Solicitation gave to AI/AN communities in fiscal year 2010-2011 to "enhance law enforcement, bolster justice systems, prevent youth substance abuse, serve sexual assault...victims, and support other efforts to combat crime" (U.S. Department of Justice, Tribal Communities, 2012, ¶ 21).

The efforts from the Department of Justice were supported through the discussions and legislation moving through Congress. For example, on July 29, 2010, President Barack Obama signed into law the Indian Arts and Crafts Amendments Act of 2010 (The Library of Congress, 2010). The bill contained provisions to provide greater federal law enforcement agencies support to AI/AN by reauthorizing several programs within the Department of Justice and the Bureau of Indian Affairs, specifically programs to reform and enhance criminal justice proceedings on tribal lands (with the exception of Alaska). Previous legislation allowed tribal governments to prosecute only crimes committed by AI/AN peoples on reservations and enforce a maximum of one year in prison, forcing tribal governments to rely on federal agencies for major offenses by AI/AN peoples and non-AI/AN peoples. The new law allows tribal courts to impose sentences of up to three years in prison or a maximum fine of \$15,000 for crimes



occurring on reservations, although the act does not alter jurisdiction over the prosecution of non-AI/AN peoples. The law would encourage cooperation between tribal and federal law enforcement agencies, as well as the sharing of resources such as information databases and legal advising. The law also requires the Bureau of Indian Affairs to train tribal law enforcement officers on how to interview victims of violence and preserve evidence, and it requires national standards to investigate and prosecute sexual assaults and assist victims of violence (Weyl, 2010; Bryan, 2010). The overall goal of the law was to amend previous legislation to clarify the responsibilities of state, local, federal, and tribal governments; increase coordination and communication among the governments (including increased collection and sharing of criminal data); enhance the power of tribal governments through funding and training programs; and ultimately reduce crime in Indian Country (The Library of Congress, 2010).

### Investigation

Despite efforts to amend ineffective legislation, remaining federal legislation restricting the jurisdictions of federal, state, and tribal law enforcement has created loopholes on reservations for non-AI/AN offenders. Unfortunately, AI/AN peoples on reservations are required to depend almost completely on the federal government for protection. This protection is against major crimes, “such as murder and felony assault, where Congress and the courts have stripped Indian tribes of their traditional powers to handle such offenses” (Eid, 2007, ¶ 4). Amnesty International suggested that prosecutors need to be vigorous in prosecuting cases of sexual violence against indigenous women (2007).

A program led by U.S. attorney Troy Eid is an example of this assertiveness. To address the loopholes left by Congress, Eid and his team have cross-deputized Southern Ute tribal police, sheriff officers, and wildlife rangers to have jurisdiction to enforce federal and tribal laws. This training involved “building a federal case, preparation for courtroom testimony, and pertinent areas of jurisdiction” (Cited in Cardona, 2008, ¶ 5). The federal prosecutors also communicated with the tribal prosecutors and justice department about the cases and whether the cases should be shared between federal and tribal governments, or if they should be solely federal or solely tribal cases. The most beneficial aspect of this cross-deputization was that tribal police had jurisdiction over non-AI/AN perpetrators. As of 2007, Eid and his team had successfully cross-deputized 60 law enforcement officers (Eid, 2007). As a result of this cross-deputation, “[m]ajor crimes [were]...investigated and prosecuted at a faster rate,” contradicting the national trend of federal prosecutors declining cases that happened in Indian Country (Cited in Cardona, 2008, ¶ 2). Eid suspected his office would get more cases as a result” of the program’s success; the cross-deputization definitely came in handy, as “[a]bout a fifth of federal criminal cases the U.S. attorney's office handle[d] in Colorado involve[d] the Southern Ute and Ute Mountain Ute reservations in the state's southwest corner, hundreds of miles from Denver” (Finley, 2007, ¶ 1).

#### Other Initiatives

In addition to legislative and investigative reforms, and despite the unique barriers AI/AN women continue to face, resources have emerged to help AI/AN communities address and heal from sexual assault victimization. Native healers have provided care for the aftereffects of victimization and offer a form of counseling that is comfortable and

familiar to AI/AN women. Most AI/AN communities have cultural ceremonies that offer a source of healing that is familiar to AI/AN women, including talking circles, sweat lodges, and healing ceremonies. AI/AN communities also have tribal justice forums that “emphasize restorative and reparative approaches to justice rather than the adversarial system found in the U.S. court system” (Hamby, 2004, p. 5). These forums often focus more on the needs of the victims and community members to seek justice for incidents of sexual assault victimization.

An educational initiative also has come from within AI/AN communities. To raise awareness of the violence plaguing AI/AN communities, many AI/AN women “have become public and political advocates for their people” (Mankiller et. al, 1998, p. 410). Wilma Mankiller, Paula Gunn Allen, and Andrea Smith have become prominent advocates for and educators of AI/AN issues. In fact, Smith cofounded INCITE! Women of Color Against Violence. INCITE!’s goal is “to end violence against women of color” that results from war, police violence, and colonialism, as well as violence within those communities such as sexual assault and domestic violence. INCITE!’s efforts include researching political projects, grassroots outreach, organizing rallies, running a grassroots clinic, training women on self-defense, and educating about violence and sexual harassment that happens to women of color (INCITE!, 2012).

Other education initiatives supported a more respectful perception of AI/AN culture by incorporating AI/AN history into general U.S. history. For example, in 1987 and 1988, the House and Senate Indian Affairs committees introduced resolutions that acknowledged the contributions of the Iroquois Confederacy on the development of the Constitution. The resolutions also reaffirmed the continuing relationship between AI/AN

tribes and the federal government, the “trust responsibility and obligation” of the federal government toward AI/AN tribes, and the “need to exercise good faith in upholding treaties with the various tribes” (Library of Congress, 1988). Though symbolic, these resolutions demonstrate how the government is beginning to recognize the contributions of AI/AN peoples to the formation of society, and the need of tribes to be empowered with resources and sovereignty.

## **CHAPTER V**

### **CONCLUSION**

#### **What Could Be Done to Address the Problem**

“The project of creating a new world governed by an alternative system not based on domination, coercion, and control, does not depend on an unrealistic goal of being able to fully describe a utopian society for all at this point in time....Nevertheless, we can be part of a collective, creative process that can bring us closer to a society not based on domination.” –Andrea Smith (2005, p. 191)

Walking into the Smithsonian’s National Museum of the American Indian, one is overwhelmed by the multiple floors of vases, blankets, canoes, and jewelry, all of these items encased and on display for visitors to walk by and hopefully learn more about the culture of “the American Indian.” Visitors are able to view and read the history of the items on display; possibly explore one of the exhibits, such as native athletes in the Olympics; and leave with a sense they have a better understanding of “the American Indian.”

While all of these items are certainly interesting artifacts in themselves, they are disjointed pieces of historical interest that fail to provide a cohesive picture of the lives of AI/AN peoples, or even one tribe. The artifacts would serve a great purpose of education if they could supplement an already ingrained knowledge of history that includes AI/AN peoples. Unfortunately, that ingrained knowledge does not exist. Rarely are students encouraged to consider the “historical anomaly” of European Americans immigrating to North America and having little to no “genetic, cultural, intellectual, and diplomatic interaction with its native people for almost two centuries before the Constitutional Convention” (Grinde & Johansen, 1991, p. 246).

Textbooks do mention some history of dispossession and cultural genocide AI/AN peoples experienced over hundreds of years. However, rarely does the general public know, understand, or fully sympathize with the problems AI/AN peoples currently face and how those problems are linked to their historical treatment. AI/AN women in particular, with the exception of Sagawea and Pocahontas (and these depictions are often Euro-centric, with these women being the saviors of white men and the objects of lust for AI/AN men) (Green, 1975), have found they are excluded from the recounting of U.S. history altogether.

The lack of AI/AN presence within history not only silenced AI/AN women, but the silence also suggested that violence against AI/AN women is larger than the issue of the violence itself. This erasure of AI/AN women from history and current discourse has created a dehumanization effect that lends itself to the perpetuation of violence. This dehumanization, combined with centuries of historical violence, may have ultimately contributed to the continuously high rates of sexual violence AI/AN women report.

When I was first appalled by the rates of sexual assault AI/AN women experience, my initial intent with this thesis was to analyze why those rates were so disproportionately high. My initial intent was to research how levels of poverty might correlate with the rates of sexual assault. After comparing several variables of data from the National Crime Victimization Survey, however, I soon realized why that focus would be very hard to tackle—the data is sparse, and the data that is available does not reflect the various factors contributing to the high rates of sexual assault. Poverty is measurable and is certainly a contributing factor to the rates. If AI/AN women had greater access to resources and were more visible within society, then the rates of sexual assault might be

lower. However, poverty is not the only factor. Poverty exacerbates the problems AI/AN women experience because of historical inequality, but poverty is also one of the many negative results of historical inequality, particularly of colonialism.

The resulting institutions of colonialism created jurisdictional and legislative confusion that made reservations prime targets for perpetrators of crime, colonialism created and reinforced the social standings of AI/AN peoples (as the “defeated”) within a dominant (or “victorious”) society. Colonialism also created (and continues to create) trauma within AI/AN communities that not only perpetuates levels of poverty, but also renders AI/AN peoples leery of “white” institutions. This caution may also be why data on AI/AN sexual assault victimizations is so sparse and unreliable—AI/AN women are afraid to report their victimizations to police, they are leery of reporting their experiences to data collectors, and they are afraid to let their victimizations be known even within their own communities.

The problem of sexual assault against AI/AN women is staggering, not just for the number of people affected, but also for the factors involved to address the high rates. Police forces can be increased, funds can be allocated to enhance SANE training and the sensitivity of health care providers to the indigenous survivors of assault, and bills can be amended to empower tribal courts to hand down more effective sentences. However, these steps address only some angles of a multi-angled issue. These acts do not get at the root(s) of the problem—how did the rates of sexual assault become as severe as they did? Are there other factors we still need to address in order to see the rates of sexual assault decrease?

From the studies and information on the issue, one thing is clear: the problem cannot be solved (if it could ever be truly “solved”) without the collaboration of larger society and AI/AN peoples. We cannot know the true severity of the problem until we fully engage the help of those affected by the problem and make the results of this collaboration widely known. Without understanding the historical, psychological, economic, cultural, and social limitations that have left AI/AN women vulnerable to sexual assault, prevented them from reporting their assaults, and prevented the perpetrators from being brought to justice, we cannot assume the rates of assault will decrease with simple amendments to bills or increased funds for police forces.

### Legislative Reform

To initiate the process of real reform, Democratic and Republican congressional leaders on the Senate Indian Affairs Committee are discussing how to address the boundary issues that have complicated the prosecutions of sexual assault reports from AI/AN women, as well as the health care treatment of victims. Some of the proposed items are legislation and funding that would increase access to SANE programs and trained nurses, and more police officers to investigate the reports and patrol reservations (Associated Press, 2007). Increased funds for more and better trained law enforcement (particularly state law enforcement, to provide incentive to protect tribes covered by P.L. 280) and for better trained health care professionals would help the victims after the assaults happen. However, these items may not significantly alleviate the rates of sexual assault, nor do they address the root of the problem and help the prevention of assaults. Funding is certainly helpful. After all, poverty and lack of funding for assistance programs is one of the root causes for the cyclical pattern of sexual assault (Greco &



Dawgert, 2007). However, levels of funding are unpredictable, and often not enough to provide the resources needed. Even with adequate funding, the root of the problem, the confusion of jurisdictions and the limits placed on tribal courts and law enforcement, still remains. Legislation is therefore needed to reduce the confusion of jurisdictions and empower tribal authorities.

In their 2007 report, Amnesty International asked that the Indian Civil Rights Act be amended to allow tribal authorities to have jurisdiction over all offenders of crimes in Indian Country, and to impose sentences consistent with international human rights standards (2007). The Indian Arts and Crafts Amendments Act of 2010 took a step in the right direction by encouraging cooperation between federal, state, and tribal authorities. The act also empowered tribal authorities slightly more by increasing the maximum fines and years of sentencing they can impose from one year of imprisonment and a \$5,000 fine to three years of imprisonment and a \$15,000 fine. However, this act is not enough to account for the seriousness of the crimes committed within and outside of Indian Country against AI/AN women. This act also does not empower tribal authorities to arrest and sentence non-Indian perpetrators who commit crimes within Indian Country. Just as the safety of AI/AN women is threatened by the limits imposed by the federal government, the sovereignty of tribal governments, and the tribes overall is threatened.

Felix Cohen, former assistant solicitor for the Department of the Interior, accused the Bureau of Indian Affairs of perpetuating the colonial relationship between the federal government and AI/AN peoples. Cohen argued that to break this relationship of domination, establish a healthier relationship between the federal government and AI/AN peoples, and ultimately better protect and serve AI/AN communities, AI/AN self-

determination is necessary. This self-determination includes allowing tribes to spend their own money as they deem appropriate, operate their own education systems, use and maintain their lands as they deem appropriate, hire their own attorneys for legal matters, and have their legal claims with the federal government settled as soon as possible (Wilkins, 1993). The Indian Reorganization Act (IRA) attempted to establish some sovereignty for AI/AN tribes by allowing tribes to develop and conserve resources, form business and other organizations, establish a credit fund for economic development, and provide vocational education for AI/AN peoples. While the Act terminated the allotment policy and encouraged cultural empathy and the development of education programs, the Act failed to establish AI/AN economic self-determination, as AI/AN communities did not have a sufficient economic base to support the communities (Wilkins, 1993).

The IRA's efforts and Cohen's suggestions for self-determination are great starts, but they fail to take into consideration an essential part of sovereignty—self-governance. Without empowerment to protect their communities and sentence offenders accordingly, tribal courts and law enforcement lack the ability to function appropriately, and a loophole of violence remains within AI/AN communities. The reauthorization of VAWA aims to empower tribal governments to arrest and charge non-AI/AN perpetrators who commit crimes within Indian Country, although this law is expected to raise concerns over increased sovereignty of tribal courts. However, in order for AI/AN communities to fully receive the protection and justice they need, legislation granting increased governmental sovereignty to tribes must pass and tribal courts and law enforcement must have full jurisdiction over what occurs in their communities.

Other legislative and collaborative measures could also be considered and passed to significantly impact the rates and treatment of sexual assault victimizations. A recent legal case in Colorado serves as an example of possible future collaborations. In 2010, a Cortez hospital refused to treat a Ute Mountain Ute woman who said she was raped. Those close to the case claimed a physician “told her to go back to the reservation because Indian Health Services often failed to reimburse the hospital for the care of indigent American Indians” (Lofholm, 2012, ¶ 11). The case highlighted not only the shortchange of federal funding that smaller tribes experience, but the refusal of treatment was also a violation of the Emergency Medical Treatment and Active Labor Act; the Act “requires public hospitals to provide emergency treatment, regardless of a patient's ability to pay” (Lofholm, 2012, ¶ 14). In fact, the investigation in the case revealed that the hospital long had problems with refusing to treat AI/AN patients. The woman’s case led to a civil-rights settlement that became a catalyst for enhanced federal government and tribal cooperation. The settlement set new policies within the hospital that “ensure tribal members who come off reservations for medical treatment aren't discriminated against” (Lofholm, 2012, ¶ 2). This case, according to Ernest House Jr., a member of the Ute Mountain Ute tribe, could be “a pivotal point for how [AI/AN peoples] access health care” (Lofholm, 2012, ¶ 7). U.S. district attorney Troy Eid also argued the case could become “a textbook example of how states and tribes should be working together on tribal rights” (Lofholm, 2012, ¶ 5). Indeed, tribes could prove to be the integral part in reforming legislation that not only improves access to health care, but also clarifies the jurisdictional confusion and rectifies the judicial problems that have left AI/AN women so vulnerable to sexual assault.

## Judicial Reform

Legislative reform should include not only the rectification of current judicial snags, but also the empowerment of tribes to operate their own judicial systems. From her interviews with AI/AN victims of sexual assault, Barbara Perry concluded that existing structures and relationships with law enforcement and the larger judicial system “have not been able - or even intended - to radically transform the place of [AI/AN peoples], so that they are recogni[z]ed as valuable and sovereign peoples” (2009a, p. 18). Andrea Smith further argued that because sexual violence is a tool of colonialism and patriarchy, the struggle for sovereignty and the struggle against sexual violence are interrelated, as attacks on AI/AN women are attacks on Native sovereignty (Smith, 2005). To encourage sovereignty and fully address the violence against AI/AN women, Perry suggested the federal government give AI/AN communities power “to implement locally relevant systems of social control” (2009a, p. 18). Research from the Harvard Project on American Indian Economic Development supported Perry’s argument.

The Project conducted research on the effectiveness of governments between tribes with more autonomy to govern their own peoples and tribes with less autonomy. The results found that “[o]nly those tribes that have acquired meaningful control over their governing institutions have experienced improvements in local economic and social conditions” (Wakeling et. al, 2001, p. 53). In fact, the research did not find “a single case of sustained economic development where the tribe [was] not in the driver's seat” (Wakeling et. al, 2001, p. 48). In all the economically stable tribes, the Bureau of Indian Affairs and other federal agencies were demoted from being decision-makers to advisors. The researchers on the project concluded that the current situation of AI/AN policing has

the effects of not only reducing tribal control, but also of diffusing accountability for poor policing. This policing is due to federal agencies' neglect of the needs and priorities of the tribes (Wakeling et. al, 2001).

The Project researchers argued that the poor policing could be enhanced not only by empowering tribal authorities, but also by implementing community policing, a process

by which communities lend their authority to the police enterprise, see their norms and values reflected in the police mission, and employ their...resources to address crime. In turn, the strategy enhances the capacity of police to address crime and to help communities become strong, independent, and resourceful. (Wakeling et. al, 2001, p. 54)

By incorporating community values and needs into the mission of law enforcement, not only is the credibility of the law enforcement enhanced, but the community is also more receptive to working with the police to report and prevent crime. This incorporation of community values could include having local elders accompany responding officers to a call. "The challenge is to create workable, nation-specific policing institutions and approaches informed by traditional customs—because they lay the best foundation for improving safety, preventing crime, and promoting the practice of effective policing in Indian Country" (Wakeling et. al, 2001, p. x).

In order to empower tribes to implement law and justice they deem relevant for their communities, legislation must be amended to clarify jurisdictions and remove tribes from under federal (and sometimes state) jurisdiction. However, as the troubles that faced the VAWA reauthorization demonstrated, legislation granting tribal courts and law enforcement more jurisdictional power may be controversial and therefore challenging to introduce and enact. To act as a temporary solution, the cross-deputization program Eid

and his team implemented in Colorado could be launched nationwide to patrol and protect tribal territories more effectively, as least until legislation fully empowering tribal governments to investigate any crimes within their territory by any perpetrator is enacted. This program could also supplement other possible short term programs to improve the current policing of reservations. For example, all law enforcement bodies, prosecutors, courts, and health service providers could develop policies and protocols of accountability, including transparent grievance systems, through which AI/AN women survivors of sexual violence can file complaints of inappropriate conduct. Under these grievance systems, law enforcement officials who fail to act on reports of sexual violence or to have carried out biased or inadequate investigations would be held accountable and have appropriate actions taken against them (Amnesty International, 2007).

Many AI/AN communities have also requested restorative and reparative approaches to justice be taken into consideration when investigating and prosecuting offenses. These approaches would happen within and outside of the court systems and could consist of healing circles and amends made (financially, emotionally, and mentally) by the perpetrators to the affected families in order to bring balance and healing back to the victims and the community (Futures without Violence, 2013). Restorative and reparative approaches to justice could assist with misdemeanor and even some felony crimes, but for violent crimes such as rape and murder, it is unclear how restorative approaches to justice would work. Nevertheless, it is important in non-violent cases to consider whether removing the offender from the situation and placing them in another potentially damaging situation, like prison, is the best method of handling those cases in

AI/AN communities, especially as such removal conflicts with the communal beliefs of those communities.

### Educational Reform

In addition to the current solutions and the proposed recommendations from Andrea Smith, INCITE! Women of Color Against Violence, Amnesty International, and Sherry Hamby, there is a need to address the root of the problem—history. The history of racism and inequality continues to perpetuate the severity of the sexual assaults AI/AN women experience. Just as it would for the legislative and judicial factors, addressing the history of violence would require a multifaceted approach. A large component of addressing this history lies within the education system. If all we know of AI/AN peoples is the history of violence they have experienced and nothing of what they currently experience, and all we know of AI/AN women are Pocahontas and Sagawea, then how can we as a society address the problem of sexual assault? How can there be an incentive to increase funding for training law enforcement (tribal and federal) and demand the restructure of programs addressing and treating sexual assault against AI/AN women when there is a lack of knowledge about the problem, about the women, about their societies, and why we should even address the issue at all?

Amnesty International argued there is a need to promote education that discusses the nature of violence AI/AN peoples experience as a result of colonialism and globalization, as well the relationships they currently have with the government and larger society (2007). There is also a need to discuss the cultures of AI/AN peoples as they did and currently exist. Educational curriculums on AI/AN peoples frame AI/AN history as a sad one, where AI/AN tribes were conquered, and their culture was erased

from the “American” identity. What educational curriculums should discuss, however, is how rich that culture was and still is and how AI/AN peoples have influenced the structure of society. Not only is the retelling of history from all sides important in the larger picture we convey to future generations, but education also has the effect of humanizing. Humanizing AI/AN peoples, and in particular AI/AN women, may have the impact of de-objectifying women, giving them a voice within history and even within today’s society, and possibly eliciting outrage at the circumstances that have left them prey to high rates of sexual assault. This humanizing may also elicit drives to revamp legislation to empower tribal courts and federal courts to better protect AI/AN women.

Not only must AI/AN history be incorporated into the teaching of American history, but historians also need to consult AI/AN peoples from various tribes for input on retelling and publishing that history (Wilson, 1998). It would be deemed poor scholastic research to ignore the transcripts or personal anecdotes of the people involved in historical occurrences (e.g. excluding Chinese stories and transcripts from Chinese history, excluding German literature and accounts of history from German history), but for some reason, it has become acceptable in the field of AI/AN history to exclude the oral stories passed down from generation to generation of AI/AN peoples. “[W]hile archival materials may offer a glimpse into the world-view of Native people, the degree to which they can provide information on the American Indian half of the equation is quite small relative to what can be gained through an understanding of oral tradition” (Wilson, 1998, p. 4). Academic works should at least be reviewed and approved by AI/AN peoples in order to be deemed scholastically worthy of representing AI/AN history.



The reform of education to incorporate AI/AN peoples, and in particular AI/AN women, is important because according to Devon Mihesuah, most people “do not connect the past to the present, which is why we should be writing history in the first place” (1998, p. 1). The current rates of sexual assault against AI/AN women is connected with what happened to AI/AN women in the past, so in order to address the current rates, we must look to the historical roots of the problem. We must also acknowledge the differences and intricacies that exist between AI/AN women of different regions and tribes. While AI/AN women share the commonalities of gender and struggles against colonialism, they differ in values, social systems, religion, experiences, and even their definitions of AI/AN identity, and all of these traits have evolved over time. AI/AN women have helped their respective tribes and families to survive economic, social, political, and religious devastation, yet historical works have rarely addressed “the feelings and emotions of Indian women, the relationships among and between them, and their observations of non-Indians” (1998, p. 7). That last point is key—AI/AN history is filled with the observations Euro-American colonists made of AI/AN peoples, and even a few observations from AI/AN men. AI/AN women are rarely included in history, or even AI/AN history, and when they are, their experiences and knowledge, and ultimately their voices are missing, leaving the history impersonal and incomplete.

This reincorporation of AI/AN peoples into U.S. history would also challenge “the normali[z]ation of abuse,” a key component to breaking the cycle of abuse (Cox, 2008, p. 2). Allowing education to challenge the preconceived attitudes toward AI/AN communities, and particularly AI/AN women, challenges the stereotypes, racism, and general notion that violence against AI/AN women is allowable because historical

circumstances made it allowable. Expanding history to retell more than the stories of the “winners” makes history more accurate and useful. History would then become a lesson on the devastation that racism, war, greed, and violence have on society and the moral and ethical foundations of people.

### Research Reform

Hand in hand with educational reform is a reform in research. In order to educate on the issues affecting AI/AN peoples, particularly women, research must be reformed to enhance the knowledge base of the issues. David Wilkins argued that current data does not provide a complete depiction of the unique and difficult position AI/AN peoples face and have faced throughout history. To Wilkins, this lack of understanding may result from questions and research strategies currently used. No one “conceptual apparatus” will provide the full “reality of their history,” as that history is too complex for single theories (1993, p. 22). While one theory, or even a mixture of theories, cannot account for the complexity and the history of violence AI/AN women face, what can be done is to provide more extensive data on the issue. This data, qualitative and quantitative, can be collected through the creation of “a more relevant set of research questions that could be tailored for each tribal society” (1993, p. 22). Some of these questions could include:

1. What conditions, politically, economically, socially, and culturally, must be established in order for tribes to become sovereign, i.e. self-governing?
2. How do the current relationships between government agencies and tribes affect the structure of tribal institutions?
3. How does the federal government’s control over AI/AN land and tribal government affect AI/AN sovereignty? (Wilkins, 1993)

Wilkins argued the research resulting from these questions would enhance a knowledge base that serves several functions. First, while AI/AN peoples currently represent less than 1 percent of the population, knowledge about their history and current issues

enhances the full depiction of American history. Second, the study of AI/AN peoples' experiences in a capitalistic economy, and the resulting poverty that has left them vulnerable in many aspects, would depict oppression that contradicts labor market ideals of equal rights for all; their stories would highlight what economic and social needs are going unmet for many people. Finally, these studies would provide insight into what conditions are needed (and what conditions harm efforts) to alleviate poverty, enhance community growth, and develop as a society. These studies may also shed light on why some reservations are more successfully autonomous than others that suffer from exploitation (such as the current exploitation of AI/AN lands for energy resources), dependency, and patriarchy (1993).

In addition to a reform in the research questions used, a reform in research needs to include a larger mixture of AI/AN and non-AI/AN researchers. Some AI/AN victims of sexual assault may find it difficult to retell their victimizations to white (or other races of) researchers whom the victims may be leery to trust. On the other end, AI/AN victims may be hesitant to tell their victimizations to AI/AN researchers whom the victims may fear are too closely associated with the AI/AN communities (and details of the victimizations therefore finding their way around the often small AI/AN communities).

This mixture of researchers should also involve a mixture of study types, qualitatively and quantitatively. The NCVS, while collecting the largest data on AI/AN victimizations of crime, also does not account for the causes of those crimes. In other words, the NCVS does not account for the unique histories of AI/AN tribes, nor does it account for AI/AN peoples who do not have access to phones and cannot participate in the survey, or victims who may be leery of the researchers and may not answer the

questions or not answer them truthfully. The quantitative data of the NCVS could therefore be supplemented by qualitative data, such as focus groups that include the telling of experiences. Qualitative data could also include European Americans attending AI/AN political rallies to

experience first-hand what it is like to be a statistical minority, what it is like to not know the appropriate social behavior or catch all of the jokes, what it is like to be regarded with uncertainty or suspicion about the reasons for your presence, and what it is like to hear frequent references to the problems caused by your own cultural group. [This observational data could] promote more culturally congruent violence research. (Hamby, 2000, p. 19)

The qualitative data could, in turn, be supported through more quantitative data, such as comprehensive data on the number of sexual assault cases referred for prosecution, the number declined by prosecutors, and the reasons why those cases were declined (Amnesty International, 2007). This data will inform activists, AI/AN communities, and the federal government on what programs need to exist and be reformed to understand the continuum of violence and strategically address it (Amnesty International, 2007). A national study on sexual violence in Indian Country was mandated by Congress in 2004. However, the study remains unfinished because the Justice Department argued the \$2 million allocated for the study was insufficient (Williams, 2012). To thoroughly examine the issues behind sexual assault of AI/AN women, agencies need adequate funding to conduct these studies.

### Cultural Reform

Educational, legislative, judicial, and research reforms are also cultural reforms that must happen in order to affect predominant U.S. culture and alleviate the severity of violence against AI/AN women. For instance, education and research reforms create a more educated and culturally sensitive society. “Although no European American can

entirely escape his or her dominant ethnic position, it is perhaps possible to at least increase one's awareness of what that means" (Hamby, 2000, p. 19). Also, because issues of race, class, gender, and colonialism cannot be separated, strategies to address violence against women of color need to account for their particular histories and the dynamics behind the violence (Smith, 2005). Education on the relationship between the dynamics, and "[i]nterpreting the vulnerabilities of Native women within the context of their historic and contemporary oppression while capitalizing on their strengths represents an indigenist perspective that will assist public health researchers and practitioners in promoting the individual health and well-being of [AI/AN] women and, ultimately, the health and well-being of indigenous communities and nations" (Walters & Simoni, 2002, ¶ 29).

In addition to education and research initiatives, programs that directly treat AI/AN victims of sexual assault are examples of cultural reform. Increased funding and access to mental and physical health programs are a first, though not all encompassing, step to treating victims. Another, and more important, step would be to make these programs culturally relevant to AI/AN survivors of assault. While there were over 500 federally recognized tribes, only 26 native specific shelters existed in 2003 (Mending the Sacred Hoop Technical Assistance Project, 2003). (Although many women are finding that shelter options alone cannot provide stability and create opportunities when leaving abusive situations. Many argue that longer-term housing and more affordable housing needs to be established as well) [Futures without Violence, 2013]. Without the establishment of programs, and cultural reforms to these programs, these programs (and health policy in general) would reinforce "invisibility, powerlessness, and further

marginality of women,” and would ultimately be ineffective in ending the cycle of abuse and treating the adverse health outcomes that result from it (Koci & Strickland, 2009, p. 13).

Unfortunately, the mapping of the best approaches to healing AI/AN sexual assault survivors is not a “one size fits all” process. Because AI/AN peoples are not a homogenous group, the formation of specific guidelines to a culturally appropriate treatment program becomes complicated. While it may be frustrating for treatment providers to tailor programs to individual communities, the tailoring of programs, and analyses of communities, is necessary (Hamby, 2000). Some AI/AN cultures offer more power to women, while others have been under the influence of patriarchal ideology for hundreds of years. “Analyses of these communities” should be “accurate and culturally congruent...or they will have little impact” Overgeneralizations of AI/AN cultures diminish the credibility of the programs and inhibit the ability of those programs to provide the best treatment (Hamby, 2000, p. 17).

To tailor programs to the needs and cultures of the victims, guidelines and advice given should be tested and “guided by the survivor rather than the agency or professional” (Cox, 2008, p. 4). Some of the services AI/AN survivors commonly request are informal meetings or home visits. These meetings and visits would not only take care of the barriers survivors face, such as child care or transportation, but they would also alleviate funding issues for providing child care and transportation to survivors to access these services (Cox, 2008). Resources could also be collaborative between federal and tribal programs. In addition to saving funds that may have been cut anyway, this collaboration of resources may minimize re-traumatization on survivors who have to

repeat their victimizations to several services, as well as offer holistic treatment for sexual assault (Cox, 2008).

Holistic treatment is important in the reformation of cultural programs. Because the formation and reformation of programs “will always be a continual learning process for everyone involved,” AI/AN communities, the federal government, and other AI/AN services need to be engaged in the process of updating and changing services (Cox, 2008, p. 5). The family and community of survivors, and general society all have the ability to band together and either “enable or disable” a survivor’s ability to heal from assault and other traumas (Cox, 2008, p. 1). These programs will need to increase attention to how value systems such as family and spiritualism, discrimination, and poverty impact the experiences of the victim and her family (Willmon-Haque & BigFoot, 2008). Some advocates of program reformation suggest training more AI/AN psychologists to counsel using “culturally sensitive mental health” methods that “avoid a subtle but profound Western cultural proselytization in their therapeutic service to native clients and their communities” (Willmon-Haque & BigFoot, 2008, p. 10). For example, talking therapies commonly used to aid white rape victims in narrating their experiences at first seemed agreeable to AI/AN community programs, as turning experiences into stories was often a common practice in AI/AN communities. However, some AI/AN victims found these stories hard to tell to their treatment providers. Not only were the experiences hard emotionally to tell, but sometimes the victims found their relating of the experiences not “communally acceptable.” In addition to internal movements’ attempts to “silence” the pain to protect the cause of ending discrimination against AI/AN peoples, some AI/AN women found the relating of experiences “called for a reevaluation of reservation and

reserve beliefs about what was appropriate to say about your own family and community” (Million, 2008, p. 5). This is when the advantages to outside participation could come into play. “[F]or example, some tribal members perceive greater confidentiality with outsiders. Such factors should be considered and be openly acknowledged” (Hamby, 2000, p. 18).

Outside assistance and education initiatives are certainly necessary to address the problems contributing to the sexual assault rates from the outside in. However, understanding and action must also come from the inside out. After all, outside perpetrators are significant players on the rates, but they are not the only players. AI/AN women on reservations reported intimate partner violence at rates exceeding any other group of women. A 2004 Justice Department report estimates the report rates to be almost 50% higher than then next most victimized group (Perry, 2004). Over one in five (or 20.9%) of AI/AN women also reported they had experienced intimate partner rape at least once in their lives (Malcoe & Duran, 2004). While these intimate partners could include AI/AN and non-AI/AN men alike, part of the problem is clearly internal and so the violence must be addressed internally as well as externally. While AI/AN men have contributed to the violence, AI/AN men themselves have admitted their role in the fight against violence toward AI/AN women has been lacking. Russell Means, for instance, expressed regret that he didn’t act on Janet McCloud’s suggestion that AI/AN men could lead the fight to stop violence against AI/AN women (Langston, 2003, p. 124). More must therefore be done in AI/AN communities to stop the violence internally and to address the external violence.



Despite the admittedly lackluster role AI/AN men have played in the fight against violence towards AI/AN women, AI/AN women have long been at the forefront of programs to bring awareness to and stop the violence against AI/AN women. AI/AN women were and are responsible for maintaining culture and caring for future generations, and they have carried this role over to their initiatives against violence. They have created educational programs on domestic violence prevention, sexual health, and suicide awareness. Many AI/AN women are also getting their post-secondary education and in turn helping and teaching their families (Popick, 2006).

Many AI/AN communities are also creating local programs to promote well-being congruent within their communities (Willmon-Haque & BigFoot, 2008). Localized consortiums and tribal colleges are advocating healthier living and mobilizing against violence within AI/AN communities by offering courses in mental health and creating locally available services for victims of violence. Programs like Sacred Hoop Journeys and Wellbriety Movements have offered addiction, sobriety, and violence prevention services; and the Sacred Circle National Resource Center to End Violence Against Women has “committed to community mobilization and increasing [international] awareness on the harm toward AI/AN women and children.” Many AI/AN organizations have realized that system changes to tribal structures, research, and the treatment of communities requires more than what mental health providers can offer (Willmon-Haque & BigFoot, 2008, p. 13). AI/AN community involvement is essential to address not just the addictions and violence coming from within and outside of the communities, but to also treat historical trauma. “By focusing on healing with the knowledge, ‘we are not alcoholics or drug addicts - but we suffer from a soul wound that needs to be healed,’”

AI/AN peoples can then begin healing. This healing would in turn “correct the past and heal [their] ancestors that have been caught in the suffering they were never able to heal in their lifetimes” (Olsen, 2010, ¶ 16). This would also prevent future generations of AI/AN peoples from experiencing the violence and the often resulting addictions that anesthetize the trauma (Olsen, 2010).

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## APPENDIX

**Table 1. A Complete Chart of Jurisdictions**

<b>A. Where the jurisdiction has not been conferred on the state</b>		
<b>Offender</b>	<b>Victim</b>	<b>Jurisdiction</b>
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	Federal jurisdiction under 18 U.S.C. § 1152 is exclusive of state and tribal jurisdiction.
Indian	Non-Indian	If listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but probably not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is assimilated. If not listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but not of the tribe, under 18 U.S.C. § 1152. If the offense is not defined and punished by a statute applicable within the special maritime and territorial jurisdiction of the United States, state law is assimilated under 18 U.S.C. § 13.
Indian	Indian	If the offense is listed in 18 U.S.C. § 1153, there is federal jurisdiction, exclusive of the state, but probably not of the tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is assimilated. See section 1153(b). If not listed in 18 U.S.C. § 1153, tribal jurisdiction is exclusive.
<b>Offender</b>	<b>Victim</b>	<b>Jurisdiction</b>
Non-Indian	Victimless	State jurisdiction is exclusive, although federal jurisdiction may attach if an impact on individual Indian or tribal interest is clear.
Indian	Victimless	There may be both federal and tribal jurisdiction. Under the Indian Gaming Regulatory Act, all state gaming laws, regulatory as well as criminal, are assimilated into federal law and exclusive jurisdiction is vested in the United States.

<b>B. Where jurisdiction has been conferred by Public Law 280, 18 U.S.C. § 1162</b>		
<b>Offender</b>	<b>Victim</b>	<b>Jurisdiction</b>
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	"Mandatory" state has jurisdiction exclusive of federal and tribal jurisdiction. "Option" state and federal government have jurisdiction. There is no tribal jurisdiction.
Indian	Non-Indian	"Mandatory" state has jurisdiction exclusive of federal government but not necessarily of the tribe. "Option" state has concurrent jurisdiction with the federal courts.
Indian	Indian	"Mandatory" state has jurisdiction exclusive of federal government but not necessarily of the tribe. "Option" state has concurrent jurisdiction with tribal courts for all offenses, and concurrent jurisdiction with the federal courts for those listed in 18 U.S.C. § 1153.
Non-Indian	Victimless	State jurisdiction is exclusive, although federal jurisdiction may attach in an option state if impact on individual Indian or tribal interest is clear.
Indian	Victimless	There may be concurrent state, tribal, and in an option state, federal jurisdiction. There is no state regulatory jurisdiction.



<b>C. Where jurisdiction has been conferred by another statute</b>		
<b>Offender</b>	<b>Victim</b>	<b>Jurisdiction</b>
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	Unless otherwise expressly provided, there is concurrent federal and state jurisdiction exclusive of tribal jurisdiction.
Indian	Non-Indian	Unless otherwise expressly provided, state has concurrent jurisdiction with federal and tribal courts.
Indian	Indian	State has concurrent jurisdiction with tribal courts for all offenses, and concurrent jurisdiction with the federal courts for those listed in 18 U.S.C. § 1153.
Non-Indian	Victimless	State jurisdiction is exclusive, although federal jurisdiction may attach if impact on individual Indian or tribal interest is clear.
Indian	Victimless	There may be concurrent state, federal and tribal jurisdiction. There is no state regulatory jurisdiction.

(Offices of the United States Attorneys, 689).

**Table 2. A Simplified Chart of Jurisdictions**

<b>Tribal, Federal, and State Jurisdiction</b> <b>Tribal Criminal Jurisdiction</b> <b>General Scope of Criminal Jurisdiction in Indian Country*</b> <b>Type of Crime</b>		
	"Major" Crime (as defined by Major Crime Acts)	All Other Crimes
Indian perpetrator, Indian victim	Federal (under Major Crimes Act) & Tribal jurisdiction	Tribal jurisdiction
Indian perpetrator, Non-Indian victim	Federal (under Major Crimes Act) & Tribal jurisdiction	Federal (under General Crimes Act) & Tribal jurisdiction
Non-Indian perpetrator, Indian victim	Federal (under General Crimes Act) jurisdiction	Federal (under General Crimes Act) jurisdiction
Non-Indian perpetrator, Non-Indian victim	State jurisdiction	State jurisdiction
* This "general criminal jurisdiction chart does not apply to jurisdiction where Public Law 280, 18 U.S.C. 1162, or other relevant federal statutes, have conferred jurisdiction upon the state."		

(Tribal Law and Policy Institute, 2011)